

BILL OF EXCEPTIONS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914¹⁹¹⁵

No. [REDACTED] 163

JONES NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

No. [REDACTED] 164

BANK OF STAPLEHURST, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

No. [REDACTED] 165

UTICA BANK, PLAINTIFF IN ERROR

vs.

CHARLES E. YATES ET AL.

No. [REDACTED] 166

THOMAS BAILEY, PLAINTIFF IN ERROR,

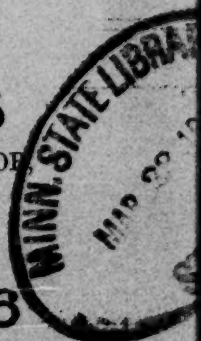
vs.

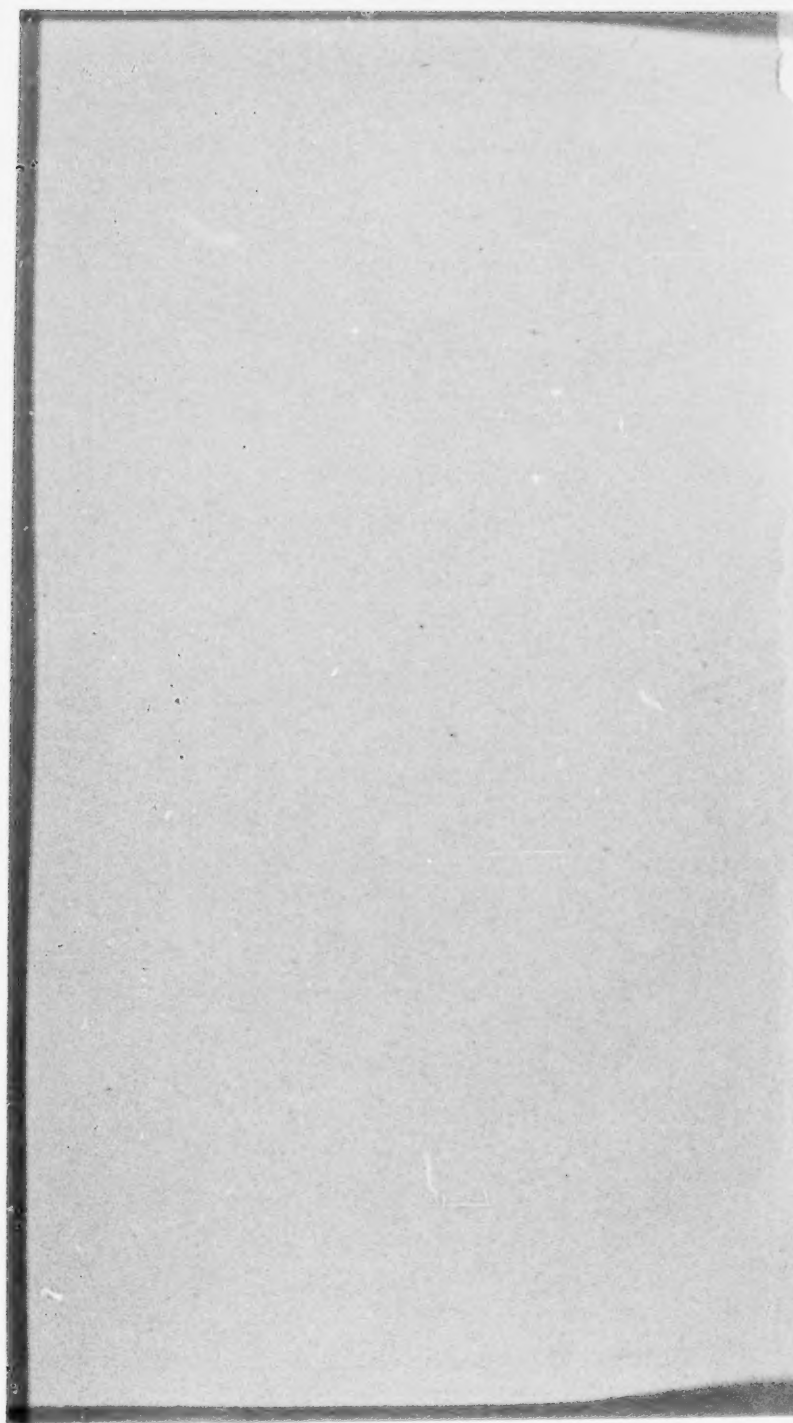
CHARLES E. YATES ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

FILED MAY 26, 1914.

(24,240, 24,241, 24,242, 24,243)





(24,240, 24,241, 24,242, 24,243)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 501.

JONES NATIONAL BANK, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

No. 502.

BANK OF STAPLEHURST, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

No. 503.

UTICA BANK, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

No. 504.

THOMAS BAILEY, PLAINTIFF IN ERROR,

vs.

CHARLES E. YATES ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

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a-12 In the Supreme Court for the State of Nebraska.

No. 17276.

JONES NATIONAL BANK, Appellee,
v.
CHARLES E. YATES et al., Appellants.

No. 17277.

BANK OF STAPLEHURST, Appellee,
v.
CHARLES E. YATES et al., Appellants.

No. 17278.

UTICA BANK, Appellee,
v.
CHARLES E. YATES et al., Appellants.

No. 17279.

THOMAS BAILEY, Appellee,
v.
CHARLES E. YATES et al., Appellants.

STATE OF NEBRASKA, ss:

I, H. C. Lindsay, Clerk of the Supreme Court within and for said state, hereby certify that this volume No. 1 hereby identified as Exhibit "A" referred to in my certificate of authentication attached to the transcript, forwarded to the Clerk of the United States Supreme Court in each of the above entitled cases, and consisting of pages numbered from 1 to 691 inclusive, is a true full and complete transcript of volume No. 1 of the Bill of Exceptions in said cases as the same now appears on file in my office.

Witness my hand and the seal of said Court at Lincoln, Nebraska, this May 21, 1914.

[Seal Supreme Court of Nebraska.]

H. C. LINDSAY,
Clerk Supreme Court of Nebraska.

* * * * *

13 And afterwards on the 28th day of May, 1902, there was filed with the Clerk of said Court a certain Stipulation in words and figures following, to-wit:

In the District Court of Seward County, Nebraska.

THE BANK OF STAPLEHURST, Plaintiff,

v.

CHARLES W. MOSHER et al., Defendants.

THE JONES NATIONAL BANK, Plaintiff,

v.

CHARLES W. MOSHER et al., Defendants.

UTICA BANK, Plaintiff,

v.

CHARLES W. MOSHER et al., Defendants.

THOMAS BAILEY, Plaintiff,

v.

CHARLES W. MOSHER et al., Defendants.

Stipulation.

The parties to this stipulation in each of the above entitled causes which are now pending in the district court of Seward county, Nebraska, hereby stipulate and agree that all of said causes shall be tried in the District Court at one and the same time, and that the evidence proper and applicable in any one case, or to any of the parties to this stipulation, whether plaintiff or defendant, subject of course to the objections of either of the parties to the stipulation and governed by the ruling of the Court, shall be offered and produced and the cases respectively disposed of by the Court and jury, unless another trial is granted by the Court.

It is further agreed and stipulated that separate verdicts and judgments shall be rendered in each case, and the same evidence, in-so-far as it may be pertinent and competent to any of said cases or to any of the parties thereto, and being parties to this stipulation, shall be considered by the jury in such case in the disposition thereof; and such evidence being properly applied to any one or to all of the parties to the stipulation as the facts of the Court may warrant.

This stipulation is made in view of the fact that evidence may be produced that is competent and proper in one or more of said cases or applicable to one or more of the parties in said cases signing this stipulation, and may not be competent or proper in other of said cases, or applicable to some of the parties in said cases, and it is agreed that the evidence that is competent or proper in any one case and for or against any one of the parties represented in this stipulation in such case may be received, and that the whole evidence as thus introduced shall be properly applied to each respective case and to each respective party thereto under the ruling and directions of the Court, subject to the objections of either party.

It is therefore agreed that if either party or any party to any of said causes represented in the stipulation shall desire to prosecute, error form the judgment of the District Court in any or in all of said cases, a transcript of the testimony given on the trial of all of said cases shall be used on the proceedings on error in any or all of said causes as the same may be desired, and that it will be necessary to settle but one bill of exceptions, and which may be filed and used

in any or all of said cases, in order to thus preserve the record and testimony of the trial of each and all of said cases, and that the bill of exceptions settled in one case shall be the bill of exceptions in each and all of said cases.

In witness whereof the parties hereto have hereunto set their hands this May 10th, 1902.

R. S. NORVAL,
J. J. THOMAS,

Att'ys for Plaintiffs.

H. F. ROSE AND
J. W. DEWEESE,

Attorneys for D. E. Thompson.

J. W. DEWEESE,
*Att'y for Def's Yates, Walsh
Estate & Hamer Estate.*

* * * * *

15 *Deposition — Jno. W. McDonald.*

Mr. NORVAL: The stipulations and agreements of the parties upon the former trial of these cases in this court are still continued in force.

We now offer in evidence the testimony of John W. McDonald, as found in Volume 3 of the Bill of Exceptions of the former hearing in this court.

Mr. ROSE: The defendant Thompson objects to the introduction of any evidence in this case for the reason that the petition, and each of them in the several cases, do not state facts sufficient to constitute a cause of action in favor of the plaintiff and against the defendant David E. Thompson; and because the facts set forth in the pleadings and established of record are not sufficient to warrant a recovery against the defendant Thompson.

Objection overruled.

Defendants and each of them Except.

Mr. BISHOP: The defendants Yates and Hamer each object to the introduction of any testimony in either of the cases for the same reasons assigned by Mr. Thompson.

Objection overruled.

Defendants and each of them except.

16-45 Testimony of JOHN W. McDONALD read from former record as follows:

Q. You may state your name.

A. John W. McDonald.

Q. You are Receiver of the Capital National Bank of Lincoln, Nebraska?

A. Yes, sir.

Q. You may state when you were appointed.

A. I don't believe I can tell you that without looking up. I think it was in the summer of 1898 sometime. I think I would have to look up my commission to be right sure about that.

* * * * *

(Exhibit "A" received in evidence, as follows:)

(Exhibit "A" attached here.)

Q. I hand you original certificate of deposit Number 23593, of the Capital National Bank, and Exhibit "B," and ask you to state whether or not Exhibit "B" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes I think it is, so far as I can see.

Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "B," being a photographic reproduction of certificate Number 23593 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "B" is as follows:)

(Exhibit "B" attached here.)

Q. I hand you original certificate Number 24452 of the Capital National Bank, and Exhibit "C," and ask you to state whether or not Exhibit "C" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "C," being a photographic reproduction of certificate Number 24452 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

Exhibit a,

Exhibit A.
L.A. Richards
N.P.



\$50,000
Capital National Bank
INCORPORATED
Dec 23 1899

PAID
CAPITAL NATL BANK
LOS ANGELES
on return of \$50,000.00 property

J. E. Hill, Treas.
Fifty thousand
payable to the order of cash
endorsed.

C. W. M. - Treas.

NOT SUBJECT TO CHECK.

21379

Interest at 4%
months

Exhibit "B"
L.A. Rickert
N. P.

Exhibit x B.



¹⁰⁰
\$40,000.00
Capital National Bank
INCORPORATED
Dec 9th 1890

J. E. Hill State Treasurer
Twenty Thousand Dollars
payable to the order of himself on return of this receipt properly endorsed
PAID NOV 3 1892
CAP. THE WYOMING
LINCOLN WYO.

cash on hand

NOT SUBJECT TO CHECK.

23593

J. E. Hill
J. E. Hill

Exhibit C
L. A. Ricketts
N. P.

Exhibit x C



\$100,250.⁰⁰
Capital National Bank
INCORPORATED
April 24 1891

J. Estee Jones has deposited in this bank
One thousand three hundred and eighty dollars
payable to the order of self, in return of this Certificate proper
endorsed.

24452 NOT SUBJECT TO CHECK.

Carrie Jones

*Will be
by C. M. Jones
from of New York Fund*



Exhibit "D"
 L. A. Rickert
 N.P.

Exhibit x D

Over La Cuyones



1985

\$14650

United National Bank
 CHICAGO

Sept 8. 1891

J. E. Hill Esq

was deposited in this Bank
 five hundred fifty and no/100 dollars

Quarter thousand six hundred fifty and no/100 dollars
 on return of this deposited property
 payable to the order of self
 endorsed

24937

NOT SUBJECT TO CHECK

to be cashed after maturity
 4 months

Indiged at
 4 Sept

(Exhibit "C" is as follows:)

48 Q. I hand you original certificate Number 24937 of the Capital National Bank, and Exhibit "D," and ask you to state whether or not Exhibit "D" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in Evidence Exhibit "D," being a photographic reproduction of certificate Number 24937 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "D" is as follows:)

Q. I hand you original certificate Number 24941 of the Capital National Bank, and Exhibit "E" and ask you to state whether or not Exhibit "E" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

49 A. Yes I think it is, so far as I can see.

Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "E," being a photographic reproduction of certificate Number 24941 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "E" is as follows:)

Q. I hand you original certificate Number 25097 of the Capital National Bank, and Exhibit "F," and ask you to state whether or not Exhibit "F" is a true and correct photographic reproduction of the original certificate together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "F," being a photographic reproduction of certificate Number 25097 of the Capital National Bank, and attach the same to the deposition of the witness
50 and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "F" is as follows:)

Q. I hand you original certificate Number 25047 of the Capital National Bank, and Exhibit "G," and ask you to state whether or not Exhibit "G" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "G," being a photographic reproduction of Certificate number 25047 of the Capital National Bank and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same
time.

Exhibit "E"
L.R. Rickards
N.P.

Exhibit + E.

Lancaster Co Express

\$10000.00

Capital National Bank

INCORPORATED

July 20 1891

C. Hill & Son

Five thousand and no/100

payable to the order of self
endorsed.

24941

NOT SUBJECT TO CHECK.

Greenfield



has deposited in this Bank

Dollars
on receipt of this Certificate properly.

Exhibit 7
 L.A. Tucker
 N.P.
 25097
 Exhibit x 7.



15000.⁰⁰
Capital
National Bank
 RECEIVED
 Aug 17 1891

PAID
 ALMAY BANK
 25097
 Dollars

L. Hill True
 F. L. Thompson
 payable to the order of self on return of this certificate properly endorsed

Longmire

NOT SUBJECT TO CHECK

NO 25097

Indirect at 4 left

\$37.9750

Capital National Bank

CHICAGO, ILL.

Aug 5 - 1891



J. C. Allen found has deposited in this Bank
 Thirty Seven Thousand seven hundred and seventy Dollars
 payable to the order of self on return of this Certificate properly
 endorsed

NO 25047

NOT SUBJECT TO CHECK.

Wm. B. Smith

Wm. B. Smith

25047



Exhibit x G.

Exhibit 'G'
 La. Ricatto
 No.

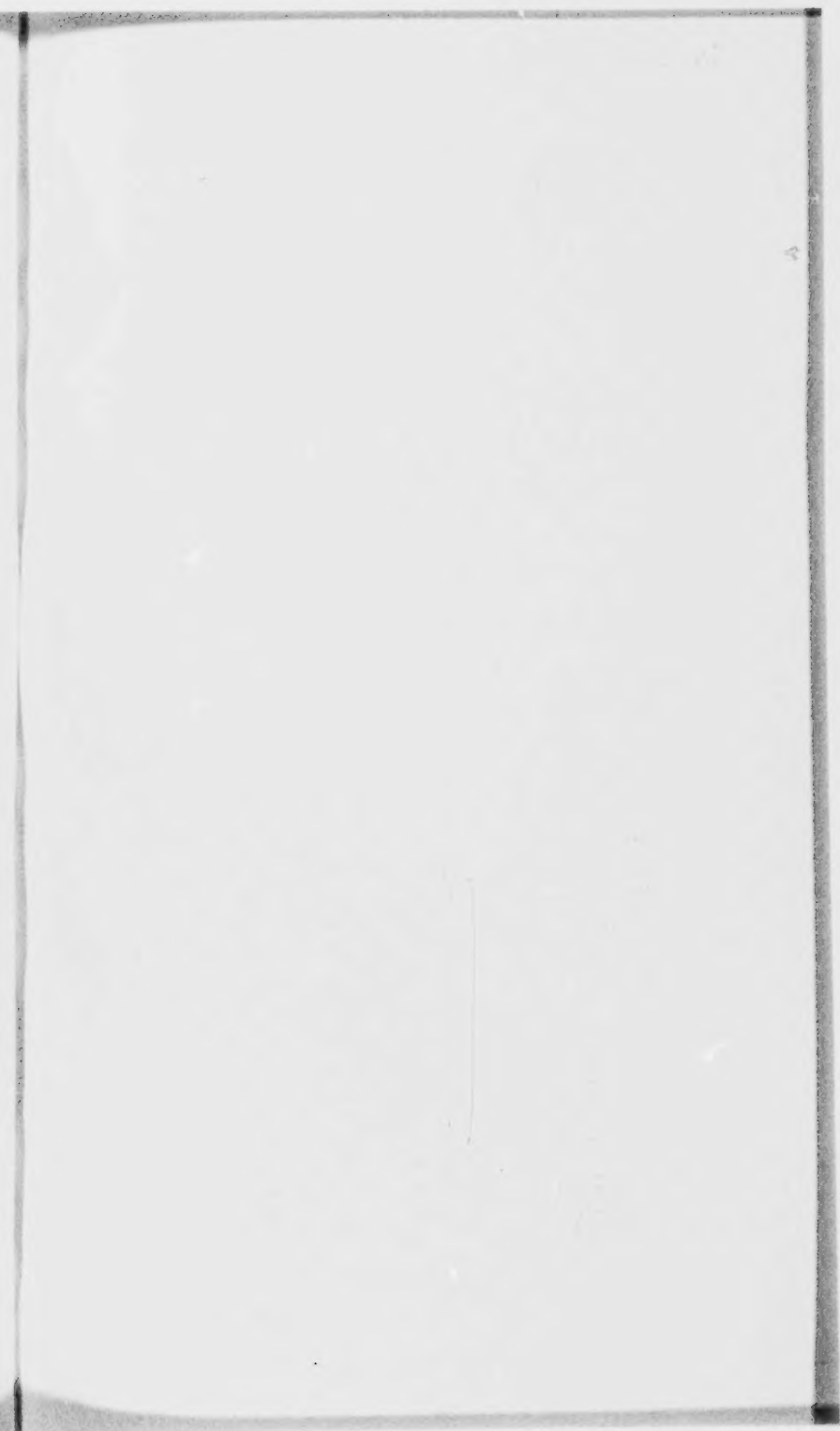


Exhibit A
La. Records
not

Exhibit x A.

\$50,000.⁰⁰
Capital National Bank
CLINGMAN'S



Nov 18

Five thousand
payable to the order of only
endorsed

25636

NOT SUBJECT TO CHECK.

Commenced

Still

51

(Exhibit "G" is as follows:)

Q. I hand you original certificate Number 25636 of the Capital National Bank, and Exhibit "H," and ask you to state whether or not Exhibit "H" is a true and correct photographic reproduction of the original certificate together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Do the original and copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "H," being a photographic reproduction of certificate Number 25636 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "H" is as follows:)

52 Q. I hand you certificate number 25862 of the Capital National, and Exhibit "I," and ask you to state whether or not Exhibit "I" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

Q. Do the original and the copy bear any endorsements?

A. Yes.

We now offer in evidence Exhibit "I," being a photographic reproduction of certificate Number 25862 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "I" is as follows:)

Q. I hand you the original certificate Number 25861 of the Capital National Bank, and Exhibit "J," and ask you to state whether or not Exhibit "J" is a true and correct photographic reproduction of the original certificate, together with all endorsements thereon?

A. Yes, I think it is, so far as I can see.

53-57 Q. Neither the original nor the copy bear any endorsements?

A. No.

We now offer in evidence Exhibit "J," being a photographic reproduction of certificate Number 25861 of the Capital National Bank, and attach the same to the deposition of the witness, and make it a part thereof, and also make it a part of the deposition of the witness John E. Hill, whose testimony is taken at the same time.

(Exhibit "J" is as follows:)

* * * * *

58

EXHIBIT "A1."

\$50,000.00.

Date, December 23, 1899.

Order of, J. E. Hill, Treas.

Applicant, — — —.

Int., —.

No. 21379.

EXHIBIT "B-1."

\$40,000.00.

Date, 12-9, 1890.

Order of J. E. Hill.

Applicant, X — — —,

Int., X —.

No. 23593.

\$371475



Dec 22 1891

J. E. Hill has deposited in this Bank thirty seven thousand one hundred and one hundred and one dollars payable to the order of Self on return of this Certificate proper endorsed

25862

NOT SUBJECT TO CHECK.

Exhibit x 1

25862

OSCAR F. COLLE
ACCOUNT
TREASURER OF STATE OF NEBRASKA

Exhibit x 1



Exhibit x 1
La. Tribune
no



months

Interest at 4% left

38114 75

Capital National Bank

INCORPORATED

Dec 22 1891



Exhibit
L.A. Richards
N.Y.

Exhibit x f.

J. E. Allen Inc.
Thirty Eight Thousand and no/100 Dollars
payable to the order of Oil of endorsed.



25861

NOT SUBJECT TO CHECK.

Dec 22 1891



EXHIBIT "C-1."

\$100,250.00.
Date, Apr. 24, 1891.
Order of J. E. Hill, Treas.
Applicant, X—— —,
Int., X—.
No. 24452.

EXHIBIT "D-1"

\$14,650.00.
Date, July 18, 1891.
Order of J. E. Hill, Treas.
Applicant, 11445.
Int., X—.
No. 24937.

59

EXHIBIT "E-1."

\$10,000.00.
Date, July 20, 1891.
Order of, J. E. Hill, St. Tres.
Applicant, X—— —,
Int., X—.
No. 24941.

EXHIBIT "F-1."

\$50.
Date, Aug. 17, 1891.
Order of J. E. Hill, Treas.
Applicant, Int.
Int., X—.
No. 25097.

EXHIBIT "G-1"

\$975.00.
Date, Aug. 6, 1891.
Order of, J. E. Hill, Treas.
Applicant, X—— —,
Int., X—.
No. 25047.

EXHIBIT "H-1."

\$50,000.00.
Date, Nov. 18, 1891.
Order of J. E. Hill, Treas.
Applicant, X—— —,
Int., X—.
No. 25636.

60

EXHIBIT "I-1."

\$37,114.75.
Date, 12-22, 1891.
Order of, J. E. Hill, Treas.
Applicant, ————
Int., —.
No. 25862.

EXHIBIT "J-1."

\$38,114.75.
Date, Dec. 22, 1891.
Order of, J. E. Hill, Treas.
Applicant, ————
Int., —.
No. 25861.

EXHIBIT "K-1."

\$5.00.
Date, Jan. 7, 1889.
Order of, G. M. Bartlett.
Applicant, ————
Int., —.
No. 19272.

EXHIBIT "L-1."

\$5.
Date, Dec. 24, 1889.
Order of, J. E. Hill.
Applicant, ————
Int., —.
No. 21386.

61 Deposition of JOHN E. HILL read in evidence from the record in the former case, by Mr. NORVAL, as follows:

Q. Where do you reside, Mr. Hill?

A. Lincoln, Nebraska.

Q. How long have you resided in Lincoln, Nebraska?

A. Eleven years.

Q. You may state what official position, if any, you ever held in the state of Nebraska?

A. I held the position of State Treasurer.

Q. From what time, and to what time, did you hold the position of State Treasurer of this state?

A. From the first week in January, 1889, to the first week in January, 1893.

Q. During the time you were holding the office of state treasurer of this state, and while the Capital National Bank, located at Lin-

coln, Nebraska, was in business, did you have any business relations or dealings with the Capital National Bank?

A. I did, as state treasurer.

Q. I now hand you Exhibit "A," which was identified by Mr. McDonald, Receiver of the Capital National Bank. You may examine that certificate, which bears number 21379, dated December 23rd, 1889, and payable to the order of J. E. Hill, Tr., for the face value of \$50,000, and state if you ever had any transaction of that character with the Capital National Bank as state treasurer, or in any other capacity?

A. I have no recollection of having any transaction of that character.

Q. You may state if you as state treasurer, or otherwise, deposited \$50,000, with the Capital National Bank of Lincoln, Nebraska, on December 23, 1889, and received the original certificate of which Exhibit "A" is a copy?

A. I did not.

62 Q. You made no deposit of that kind or character at that time?

A. No sir.

Q. You may state if you ever received from the Capital National Bank, or any one for the Capital National Bank, the amount specified in this certificate, to-wit: \$50,000, on January 6, 1893, or at any other time, in payment of the same?

A. I did not.

Q. You may state whether you ever authorized anyone to draw that amount, the amount of that certificate, from the bank for you as state treasurer, or otherwise?

A. No sir, I never authorized anyone.

Q. You may state if you ever endorsed this certificate, or authorized anyone to endorse it for you?

A. No sir, I did not, nor authorized anyone to do it for me.

Q. I now hand you Exhibit "B," which has been identified by the preceding witness, Mr. McDonald, receiver, which is certificate of deposit for \$40,000, dated December 9, 1890, and payable to J. E. Hill, State Treasurer, bearing number 23593, and signed by C. W. Mosher, Pt., and state if you ever saw that certificate before.

A. I have no knowledge of ever seeing this certificate.

Q. You may state whether or not the certificate, Exhibit "B," which I have just handed you, and which is referred to in the preceding question, represented a business transaction between you as state treasurer, and the Capital National Bank of Lincoln, Nebraska?

A. Yes, it did.

63 Q. You may state if you deposited with the Capital National Bank of Lincoln, Nebraska, the amount specified in Exhibit "B" on the date therein specified?

A. Yes sir, there is no question but what the amount was deposited.

Q. You may state if you drew from the Bank the amount men-

tioned in the certificate about the date of its stamp "paid" on face of the certificate, as state treasurer?

A. Yes, the amount evidently was drawn.

Q. How is that?

A. Yes, sir.

Q. I now hand you Exhibit "C," which was identified by preceding witness, Mr. McDonald, receiver, which bears date 24, 1891, payable to the order of J. E. Hill, Treas., for the value of \$100,250.00, bearing number 24452, and ask you to if you ever saw that certificate?

A. I have no remembrance of seeing that certificate.

Q. You may state Mr. Hill, if that certificate was ever in your possession as state treasurer, or otherwise until it was produced by the receiver today?

A. No sir, that never was held by me as state treasurer.

Q. You may state whether that represented a transaction between you as state treasurer, or any one for you as state treasurer, with Capital National Bank?

64 A. No sir, I never had any such business transaction.

Q. You may state if you at that time, or at any other time, had a transaction with the Bank for that amount as state treasurer or otherwise?

A. No sir.

Q. You may state if you, or any one for you, or in your behalf deposited that amount with the Capital National Bank at that time?

A. They did not.

Q. You may state whether you, or any — authorized by you as state treasurer, or otherwise, draw that money on behalf of the state treasurer, or yourself?

A. No sir.

Q. Looking at the back of Exhibit "C," you may state if the endorsement upon the back of that in the following words: "J. E. Hill, Treasurer, By C. W. Mosher, Treasurer of the Neb. Relief Fund," was placed on there by your authority, your knowledge, your direction or your consent?

65 A. It was not.

Q. You may state if any portion of the money stated on the face of the certificate, Exhibit "C," was paid to you by the Bank, to anyone for you, as state Treasurer, or otherwise?

A. It was not.

Q. Was the endorsement placed on there by you?

A. It was not.

Q. Handing you Exhibit "D," which was identified by the preceding witness, Mr. McDonald, receiver, bearing date July 18, 1891, for \$14,650, and numbered 24937, you may state if that represented an actual transaction between you as state treasurer, or otherwise and the Capital National Bank?

A. It does not.

Q. You may state if you deposited with the Capital National

Bank on the date the certificate bears, July 18, 1891, \$14,650.00, or any portion of it?

A. I did not.

Q. You may state if any funds, any amount of money, was ever at any time paid to you as state treasurer, or otherwise, or to any one else for you, in payment of Exhibit "D"?

66 A. There was not.

Q. You may state if you at any time ever endorsed, or authorized any one to endorse, Exhibit "D"?

A. I never endorsed it, and authorized no one to endorse it for me.

Q. Is there any endorsement on the back?

A. No, there is no endorsement on the back.

Q. I now hand you Exhibit "E," which is a certificate drawn for \$10,000, bearing number 24941, dated July 20, 1891, payable to J. E. Hill, St. Treas., and will ask you to state whether that represents a transaction between you as state treasurer, or otherwise, with the Capital National Bank on that day?

A. It does not.

Q. You may state whether you upon that day, or any other time deposited the money therein mentioned, or any portion of it?

A. I did not.

67 Q. You may state if on the 6th day of August, 1891, or any other time, the Capital National Bank, or any one for them, paid to you, or anyone for you, the amount of money, or any portion of the money, mentioned in the Exhibit?

A. They did not.

Q. You may state whether that was ever endorsed by you, or any one for you?

A. It was not endorsed by me. There is no endorsement on it.

Q. Now handing you certificate of deposit issued by the Capital National Bank for \$50,000, bearing date August 17, 1891, payable to the order of J. E. Hill, Treas., bearing number 25097, and identified by the preceding witness, Mr. McDonald, Receiver, as Exhibit "F." I will ask you to state whether or not you had any transaction of that character at that time?

A. I did not.

Q. You may state whether or not you made a deposit of the amount mentioned in that certificate, or any portion of it, at that time or at any other time?

A. I did not.

68 Q. State whether or not on January 6, 1893, or at any other time, there was paid to you, or for you, by the Capital National Bank, or any one for the Bank, the amount specified in this certificate, or any portion of it, as state treasurer or otherwise?

A. There was not.

Q. You may state if there is an endorsement upon the back of certificate, Exhibit "F"?

A. No sir.

Q. I now hand you Exhibit "G," which is a certificate that was identified by the preceding witness, McDonald, Receiver, bearing date August 5, 1891, drawn for \$37,975, payable to the order of J. E.

Hill, Treas., bearing number 25047, and will ask you to state if you deposited, or your office deposited, that amount with the Capital National Bank at that time?

A. Yes, sir.

Q. You may state if the amount of funds, the full amount for which that certificate bears upon its face, was paid to you by the Capital National Bank, or its officers?

A. It was.

Q. And the endorsement upon the back of Exhibit "G" is made by who?

A. Made by myself, by my deputy, George M. Bartlett.

69 Q. Your authorized deputy?

A. Yes, my authorized deputy.

Q. And the full amount mentioned on the face of that certificate was actually paid to the state treasurer in satisfaction of the certificate?

A. It was paid, yes sir.

Q. Handing you Exhibit "H," which was identified by the former witness, Mr. McDonald, Receiver, being a certificate of deposit issued by the Capital National Bank for \$50,000, dated November 18, 1891, payable to the order of J. E. Hill, Treas., bearing number 25636, I will ask you to state if you as such treasurer, or otherwise, deposited the amount of money specified in the certificate at that time, or at any other time, or any part thereof?

A. I did not.

Q. You may state if you as state treasurer, or otherwise, or any one for you as state treasurer, or otherwise, received from the Capital National Bank, on May 21, 1892, the \$50,000 specified in this certificate, or any part of the same.

— No sir.

Q. You may state Mr. Hill, turning to the back of Exhibit "H," if that endorsement, "J. E. Hill, Treas.," was written by you or any of your deputies, or anyone authorized by you?

70 A. It was not written by me, nor did I authorize any person to write it.

Q. And neither yourself, nor the state treasurer, received any portion of the funds?

A. They did not.

Q. Handing you Exhibit "I," being certificate of deposit issued by the Capital National Bank, dated December 22, 1891, for \$37, 114.75, payable to the order of J. E. Hill, Treas., and numbered 25832, and being the certificate identified by the preceding witness, Mr. McDonald, Receiver, you may state if you deposited as state treasurer the amount of money mentioned therein upon that date?

A. I did.

Q. You may state whether or not the Capital National Bank on December 13, 1892 paid you the full amount of money specified in Exhibit "I"?

A. They did.

Q. And you may state, turning to the back of Exhibit "I" whose endorsement is on the back?

A. That was my endorsement as state treasurer, by my deputy, George M. Bartlett.

Q. That is a genuine endorsement?

A. Genuine endorsement,—no question about that.

Q. Handing you Exhibit "J," which is an exhibit that was identified by the preceding witness, Mr. McDonald, Receiver,
71-76 which is a certificate of deposit issued by the Capital National Bank for the face value of \$38,114.75, bearing date December 22, 1891, payable to the order of J. E. Hill, Treasurer, and bearing number 25861, I will ask you to examine the same, and state if you know whether or not the amount of money specified in the certificate was deposited by you, or anyone for you, as state treasurer, or otherwise, with the Capital National Bank?

A. There was no such amount deposited by me, nor any portion of it, nor for me, nor by me.

Q. You may state whether or not you received from the Capital National Bank, or anyone representing the Capital National Bank, either by yourself, or otherwise, as state treasurer, or otherwise, the amount of money mentioned in the certificate, or any portion of it, on December 22, 1891, or any other time?

A. I did not.

Q. Turning over the certificate, please examine the back, and state whether there is any endorsement on the back of the same?

A. No endorsement appears on the back of it.

Q. You may state whether you ever endorsed it or transferred it, or authorized any one to do so?

A. I did not.

* * * * *

77-82 Ex.'s A, B, C, D, E, F, G, H, I, AND J.

Plaintiff now offers in evidence, and asks the Notary to make copies thereof in writing, or photographic copies, Exhibits "A," "B," "C," "D," "E," "F," "—," "H," "I," and "J," together with all endorsements and memoranda thereon, and that the same be severally attached to and made a part of the deposition of Mr. Hill.

* * * * *

83 Deposition of D. J. CARNES read in evidence as follows:

Direct examination.

Read by Mr. NORVAL:

State your name, age, residence and occupation.

A. My name is D. J. Carnes; age fifty four years; resident Sycamore, Illinois; occupation, practising lawyer

Q. State how long you have resided at Sycamore, Illinois.

A. Ever since November, 1873.

Q. Are you acquainted with C. W. and W. W. Marsh?

A. I am.

Q. How long have you known them?

A. Well ever since I came here to town.

Q. Where have they resided during that period?

A. C. W. Marsh has resided all the time in the Township of De Kalb adjoining the Township of Sycamore. W. W. Marsh, I think, has had his residence here in the city of Sycamore all the time. His home has been here. He has been away portions of the time.

— Are you acquainted with the financial standing of C. W., and W. W. Marsh?

A. I am.

Q. And have you been acquainted with their financial standing and property worth since January 1st, 1885 and up to and including the present time?

A. I have.

Q. You may state what relation, if any, you have sustained to C. W. and W. W. Marsh during the time stated in the last preceding interrogatory?

84 A. I was one of their attorneys in troubles following the failure and continued to be so until they were practically through with those troubles. I have been engaged for W. W. Marsh in some matter or matters all the time since then. Have had no professional business to do for C. W. Marsh for some time past.

Q. You may state, if you know, whether or not the parties above mentioned ever failed in business, and if so, give the date as nearly as you can.

A. I know that those parties failed sometime in the Summer of 1894, if I remember it. I can't give the exact date without looking at memoranda. The Marsh Binder corporations in which their principal interests were, made an assignment at that time and that involved the Marsh Harvester Corporation in which they had interests and the firm of C. W. & W. W. Marsh in which name they had other properties and their own individual properties in such a way that they were unable individually or jointly in each of those capacities to pay their debts.

Q. You may state, if you know, whether or not the firm of C. W. & W. W. Marsh have been solvent and able to pay their indebtedness since January, 1885?

A. They have not.

Q. You may state if you were acquainted with the Marsh Harvester Company, during the time it existed at Sycamore, Illinois?

A. I was from the time I came to Sycamore in 1873, and more particularly after I was admitted to the bar in September, 1875.

The corporation antedates my acquaintance with it. The 85 Marsh Harvester Company was located at Sycamore, Illinois.

Its principal office and manufacturing plant was located there.

Q. You may state if you are acquainted with the financial standing and solvency of the Marsh Binder Company from January 1885 up to and including this time?

A. I was and am. I am not sure that that was the technical name of the corporation. It was the name it went by.

— You may state what you know as to the solvency or insolvency of the Marsh Binder Company within the dates mentioned in the preceding interrogatory?

A. Well on January 1st, 1885, that corporation was in the hands of an assignee under an assignment that had been made under our State law in the preceding year. I was one of the attorneys for the assignee, and without looking up particular data I could say that I know the assignee did not realize assets enough to pay in full the preferred claims of the laborers.

Q. Do you know whether or not there were sufficient assets of the firm to pay any portion of the general creditors of the firm or corporation?

A. I am positive that there was nothing whatever paid and no asset to pay anything whatever of the general creditors' debts.

— Were you acquainted with the Sycamore Marsh Harvester Manufacturing Company located at Sycamore, Illinois?

A. Yes, sir.

Q. How long did your acquaintance extend?

A. That was the original company that antedates my residence here and was nominally in existence until the assignment of the Binder Company but its business was transferred to the Binder company. I knew the company all the time from my first residence here and knew its affairs quite intimately after the time I was admitted to the bar in 1875.

86 Q. You may, if you know, state whether or not the Marsh Manufacturing Company did any business in the way of manufacturing any machinery or commodities, or articles, after January 1st, 1885?

A. It did not.

Q. You may state whether or not you were conversant with the assets, the financial responsibility, of the Sycamore Marsh Harvester Manufacturing Company from January 1st, 1885 up to the present time.

A. I was and am.

Q. You may state what it was.

A. It has not been a going concern since that time. Has had no asset of value since that time and has been always since that time, unable to pay any debt whatever.

Q. You may state if you are acquainted with the Marsh Binder Manufacturing Company of Sycamore, Illinois.

A. I was.

Q. And how long has your acquaintance been with the company?

A. I know that from the time it organized, there was only one corporation that was known here by the name of the Marsh Binder Company. I think its full technical name was the Marsh Binder Manufacturing Company, and any answer that I make here responsive to inquiries about the Binder Company refers to that corporation, by whatever its technical name may be.

Q. You may state how many companies or corporations there were in which the Marshes were interested in the manufacturing of farm machinery at Sycamore, Illinois?

A. There was originally the Marsh Harvester Company, as com-

monly called. Its technical names was, I think, the Marsh Harvester Manufacturing Company. The assets of that company were transferred for the most part to the Marsh Binder Company, as commonly called. Its technical name was, I think, Marsh Binder Manufacturing Company. There was also the firm of C. W. & W. W. Marsh that did some manufacturing on the side, so to speak, in connection with the business of those two corporations.

Q. And then aside from the technical name that you have just given in answer to the preceding interrogatory, there was no other corporations or firms transacting business at Sycamore, Illinois, or manufacturing machinery at this place, other than those you have given in which the Marshes, either C. W., or W. W., were interested?

A. Not that I know of. Of course either one of those men may have had some other little interest in some other business here, but nothing of any consequence.

Q. And what do you say as to the solvency or insolvency and the ability of the Marsh Binder Manufacturing Company to pay and discharge its obligations from and since January 1885, up to and including the present time?

A. It has been unable to discharge any obligation since the 1st of January, 1885, except, as I have said, the assignee did work out of the assets after January 1st, 1885, some small amounts of money that were applied on the preferred claims of laborers against the corporation.

Q. And those payments were made under the provisions of your local law?

A. They were made under the provisions of our State Insolvency law.

88-90 Q. You may state if you know whether or not either the firm of C. W. & W. W. Marsh, or the individual members of the firm, or the Marsh Harvester Manufacturing Company, or the Marsh Binder Manufacturing Company, were, any or either of them possessed of property sufficient to pay their obligations since January 1st, 1885, and up to and including the present time?

A. They were not, as I understood it. I would not be able to positively say that in the last two or three years, that C. W. Marsh, for instance, might not have some assets to pay a debt but I know there were executions outstanding, following the failure in 1884, for large amounts that were and so far as I know, always have been uncollected and regarded uncollectible, that were against the property of these several concerns.

Q. You may state if you know, you can approximately, about the amount of the indebtedness of which executions have been unsatisfied.

A. I could not give figures without looking up documents and records. I know they were large amounts, running up into a good many thousands of dollars.

* * * * *

91 Q. To what failure do you refer in answer to the last cross interrogatory?

A. I refer to the time when the Binder company made an assignment for the benefit of creditors in the Summer of 1884.

Q. You stated you were acquainted with the firms above mentioned and corporations above mentioned having commercial or farmers' papers as collateral security and that you knew something of its character. You may state what was the character of the paper, if you know, that was used by the C. W. & W. W. Marsh Company, The Sycamore Marsh Harvester Company, and the Marsh Binder Company and given as security which they or one of them owe the parties.

A. The commercial paper that these three concerns used here immediately before the failure in securing people, I know considerable about through efforts of myself and others to collect it and my recollection is that parties holding it did not succeed in collecting more than twenty-five or thirty per cent of the face value of the papers.

Q. You may state if you know anything about the character of the assets of the C. W. & W. W. Marsh, the Sycamore Marsh Harvester Company, and the Marsh Binder Manufacturing Company which were owing by parties in other states and especially in the state of Nebraska.

A. What time?

Q. During the years 1884 and thereafter.

A. I know that the assets of the Marsh Harvester Company by way of the commercial paper, were mostly old for the reason that that company had gone out of active business some time before that date. They were consequently poor by reason of their age and efforts that had been made to collect out of those assets. I know that the paper of the Marsh Binder Company was most of it given on sale of what we know as the low down binder and that the machine proved a failure and the payment of the paper was resisted and, therefore, that paper became very poor paper. The paper of C. W. & W. W. Marsh was, I think, a good part of it, old and my recollection is that it was not any where near as much in amount as the other concerns. I do not recollect distinctly now what they manufactured and such, but I know in a general way that all the paper any and all of those had in the Summer of 1884 was very poor commercial paper.

Q. And do you know of efforts being made to collect the several kinds of papers you have described in the preceding answer?

93 A. Yes sir, I do.

Q. And state what efforts, if any, were made and give results.

A. The paper that was turned in as collateral immediately before the failure went into the hands of various parties here. Quite a good deal of it went through this office, and more of it went through other offices that I was familiar with. Efforts were first made to collect by sending to Banks, or local collectors, and agents; then, afterwards a good share of that paper was put by various parties here into the hands of a bad debt collector at Rockford, and I know that he had a very great amount of it. I have seen his books and lists

and was interested in some of it myself. The paper was handled by him for quite a while, efforts made to collect it by having men in the field, securing it or collecting it, or doing anything to aid in getting it in better shape, and the upshot of all these methods of collection was, as I have said before to get from twenty five to thirty percent of the money on these several kinds—on the face value of the paper.

(Signed)

D. J. CARNES.

* * * * *

94 Deposition of P. M. ALDEN offered and read in evidence as follows:

Direct examination.

By Mr. NORVAL:

Q. State your name, age, residence and occupation, and business.

A. My name is P. M. Alden; sixty seven years old; residence Sycamore, Illinois; not at present engaged in active business; banker by profession.

Q. State how long you have resided in Sycamore, Illinois.

A. Since 1855, with the exception of about four years in Chicago prior to the time of the fire in 1871.

Q. You may state if you are acquainted and have been acquainted with the firm of C. W. & W. W. Marsh, the Marsh Binder Manufacturing Company and the Sycamore Marsh Harvester Manufacturing Company—corporations?

A. I am well acquainted and have been for the past thirty years at least, or from the time of the incorporation of the said companies.

Q. Were you acquainted with the above named companies and corporations prior to 1883?

A. I was.

Q. You may state what was the business of the firm and companies named, at that time?

A. The business of C. W. & W. W. Marsh was mainly in managing and looking after business of the Marsh Binder Manufacturing Company. They had some little outside business of their own in a small manufacturing way, but their main business was as managers for the Binder company.

Q. And what was the business of the Marsh Binder Manufacturing Company and the Sycamore Marsh Harvester Manufacturing Company?

95 A. Manufacturing binders—reapers and binders. They did some other manufacturing of farm implements.

Q. And where were their factories and business located—at what point?

A. In Sycamore, Illinois.

Q. Are they still in business?

A. They are not.

Q. When did they cease doing manufacturing business?

A. It was in June '84. Can't give the date—June '84.

Q. And do you know the occasion of their going out of business?

A. I do.

Q. You may state what that occasion was, and how they went out of business?

A. Judgements were obtained in the adjoining county for quite a large sum, other claims immediately presented and pressed for collection at that time, and the shops were at once closed.

Q. And in what manner were they closed?

A. I think by the levy of the executions in the hands of the sheriff of this county.

Q. Do you know anything about their conveying any property or making any assignment?

A. I know they did later on.

Q. About when was that?

A. I think within a very few days. I should say the same week.

Q. And since that time do you know whether they have transacted any business—any manufacturing business, or anything of that kind?

A. They have not.

Q. Neither as a firm or corporation?

96 A. They have not.

Q. You may state, if you was associated in any business in which the Marshes, C. W. & W. W., or either of them, was connected in capacity of banker or otherwise?

A. I was.

Q. State your relations with them in that capacity.

A. In the years 1872-'73, the Marshes became large stockholders in the Sycamore National Bank of Sycamore, of which bank I was cashier from its opening, for more than twenty years. Both became directors at the time of purchase of stock and so continued until they sold said stock, prior to about 1883.

Q. You may state if you were well acquainted with the financial worth and standing of the firm of C. W. & W. W. Marsh, also of the Marsh Binder Manufacturing Company, and the Sycamore Marsh Harvester Manufacturing Company at the time of the failure in 1884.

A. I was.

Q. You may state what was their financial condition at that time as to solvency or otherwise, and each of them, in August 1884.

A. They were insolvent.

Q. Each, the firm and corporations?

A. Yes, sir.

Q. You may state if you know what has been their conditions since that time, since August 1884 and up to and including the month of February, 1893, as to solvency or otherwise.

A. They continued to be entirely insolvent.

97 Q. You may state, if you know, whether or not there was such a company, either a firm or corporation, as the Marsh Binder Company?

A. There was such a company,—so called.

Q. And was the Marsh Binder Company solvent or insolvent?

A. Insolvent.

Q. From what time?

A. From the time of the failure in June 1884 up to the present time.

Q. You may state if there was such a firm or corporation as the Sycamore Marsh Harvester Company?

A. Not to my knowledge, except the one so-called.

Q. You may state, if you know, whether or not executions have been returned upon judgments rendered against the firm of C. W. & W. W. Marsh, Sycamore Marsh Harvester Manufacturing Company and the Marsh Binder Manufacturing Company, unsatisfied?

A. They have.

Q. You may state, if you know, whether or not the Sycamore Marsh Harvester Manufacturing Company was in business as such in the years 1885-1886-1887-'88-'89-1890-1891-1892-1893?

A. It was not.

Q. You may state, if you know, whether or not the firm of C. W. & W. W. Marsh was in business as such in the years 1885, '86-'87-'88-'9-1890-1891-1892, and 1893?

A. They were not.

98 Q. You may state whether or not the Marsh Binder Manufacturing Company was in business at any time from January 1885 up to and including the month of March 1893?

A. It was not.

Q. You may state with what bank, if you know, the firm above named and the companies and corporations above named, transacted their business in Sycamore, Illinois, at the time of their failure.

A. Yes, I do.

Q. Name the bank.

A. The Sycamore National Bank.

Q. That was the bank with which you were then connected?

A. It was, yes sir.

Q. And how did you obtain your knowledge as to their financial standing and conditions for the years you have testified? Briefly.

A. The bank made them loans continually and received from outside banks and parties many items for collection.

Cross-examination:

Read in evidence as follows:

Q. Have you any personal knowledge of assets in any other state than the State of Illinois, which at one time have belonged to the corporations or the firm named, prior to their failures that you have testified about?

A. I have some knowledge.

Q. Is it not true that large amounts of commercial paper given by non-residents of the State of Illinois, had before the failures mentioned, been assigned to their creditors?

A. It is true.

99 Q. Is it not true that the National Capital Bank at Lincoln, Nebraska, held a large amount of such commercial paper prior to the failure of those corporations,—prior to 1885?

A. It is true.

Q. Have you any knowledge as to the amount or face value of such commercial paper?

A. I cannot state the amount, excepting it was quite a large sum total.

Q. You can approximate the amount.

A. I cannot state the date. It was sometime prior to the date of failure. They held at least \$200,000 in such papers.

Q. These corporations that you have mentioned at the time of the failures mentioned went into the hands of assignees, did they not?

A. The Marsh Binder Manufacturing Company did. I am not sure as to the others.

Q. And the assignee made no attempt whatever to collect any of the commercial paper you have referred to as having been assigned by these corporations or by this firm prior to the failures?

A. I would say not to my knowledge.

Redirect examination.

Read in evidence by Mr. NORVAL:

Q. What knowledge did you have of the collateral papers in the hands of the Capitol National Bank of Lincoln?

A. I cannot give the dates, but I was there in person sometime, a year or two prior to the failure, and with Mr. Mosher and the cashier I was shown a large amount of the paper.

Q. How long was that before the failure of C. W. & W. W. Marsh, the Sycamore Marsh Harvester Manufacturing Company, and
100 the Marsh Binder Manufacturing Company?

A. As I have stated, I cannot give the exact date. I would say two years prior to that time.

Q. Then you have no knowledge of whether or not the Capitol National Bank held any paper as collateral to the indebtedness of C. W. & W. W. Marsh and the several Binder and Harvester Companies at the time of the failure in 1884?

A. Only as I am informed they had some.

Q. And you have no knowledge,—personal knowledge—of their holding any collateral for any indebtedness of C. W. & W. W. Marsh, the Sycamore Marsh Harvester Manufacturing Company, and the Marsh Binder Manufacturing Company in the years 1885, '86-'87-'88-'89-'90-'91-'92 and '93?

A. I have not.

Q. Do you know whether or not any sum was realized out of the collaterals which you say was held by the Capitol National Bank against the several Marsh companies at the time you were there, some two years before the failure of the Marsh companies here in 1884?

A. I have not. I do not know that anything was collected.

Q. Do you know, or did you know the value of the collateral that was put up with the Capitol National Bank of Lincoln, Nebraska, prior to the failure of the several Marsh companies at Sycamore, prior to 1884?

A. Judging from subsequent events, I would think the papers were not worth over twenty-five cents on the dollar.

Q. And you have no knowledge of any collateral given by any of the Marsh companies above named to the Capitol National Bank for indebtedness which was made and incurred after the failure of the Marsh companies at Sycamore in 1884?

A. I have not.

Q. You have never examined any of the collateral notes which you say were in the Capitol National Bank at Lincoln, Nebraska, were there as collateral, or were they being collected upon the account of Marsh Brothers, Mosher & Company?

A. They were there as I understood it and was told, both for collection and collateral for debts, to the bank as I understood it.

Q. And do you know that the proceeds were paid when collected upon the indebtedness of the several Marsh companies?

A. I know nothing whatever as to that matter.

Q. You have never examined any of the collateral notes which you say you saw there some two years before the failure of the several Marsh companies, which would be in the year about 1882, since the failure of the Marshes?

A. I would say not to my knowledge. I do not know that I did.

Q. Do you know anything of your own knowledge as to whether or not the assignee of the Marsh Binder Manufacturing Company attempted to collect the notes owned by the company after the assignment?

A. I understood from him that he was attempting to collect them.

Q. Do you know how he succeeded?

A. I do.

Q. What was the result of his efforts?

102 A. Very little was collected.

Q. Do you know whether or not any of the general creditors of the firm or company was paid anything under the assignment?

A. They were not paid.

Q. You may state if you know whether there was sufficient money to pay the preferred creditors, under the laws of the State of Illinois, which were the laborers?

A. There was not enough for that.

(Signed)

P. M. ALDEN.

* * * * *

103-113 Second deposition of JOHN W. McDONALD offered and received in evidence.

* * * * *

114 Q. I will ask you if you have in your possession as receiver of the Capital National Bank, and as a part of the nominal assets of that bank, notes executed by the Western Manufacturing Company to the Capital National Bank?

115 A. I have twenty four notes of \$5,000 each, and two of \$2,500 each, made by the Western Manufacturing Company.

Q. How are each of those notes signed?

A. Signed by the Western Manufacturing Company, by E. Hurlbut, Jr., Manager, except in one case, where there is a copy of the note, the original having been lost, and judgment for receiver's certificate having been allowed by the court; all of the rest are original notes.

Q. Do you know the signature to those notes?

A. Yes, I think I know Mr. Hurlbut's signature.

— Are those notes signed in his handwriting?

A. Yes, I think they are.

Q. Do the notes bear any endorsement?

A. They all have endorsements.

Q. Do you know the handwriting of the endorser?

A. Many of them have more than one endorsement.

Q. You may state whether or not they bear the endorsement of C. W. Mosher as President?

A. All but two of them bear the endorsement of C. W. Mosher, President.

116 Q. Are you acquainted with the signature of C. W. Mosher?

A. Yes, fairly so. It has been a long while since I have seen it,—a long while since I saw him write it,—but I think I know his signature fairly well.

Q. Are those notes you have referred to a part of the assets of the Capital National Bank now in your hands?

A. Yes sir.

Q. Were those notes a part of the assets of the Capital National Bank at the time of its suspension, January 21, 1893?

A. Yes.

Q. Have those notes been placed in judgment by the Receiver of the Capital National Bank?

A. I cannot tell you without looking up the records.

Q. Has the receiver attempted to collect them?

A. I have not.

Q. If not, why not?

A. Because there is no one to collect them from. All efforts were exhausted by the former receivers to collect these notes.

117 Q. You may explain more fully what you mean by "no one to collect them from."

A. I never was able to discover that the Western Manufacturing Company had any assets of any kind.

Q. Do you know of such a company being in existence?

A. There was a company that bore that name, but I never understood that they had anything.

Q. Who, if anyone, constituted the Company, if you know?

A. I don't know.

Q. The company that bore that name, where did it do business?

A. I think in Lincoln.

Q. Where was its principal place of business?

A. I think in Lincoln.

Q. At what place of business in Lincoln?

A. Of my own knowledge I do not know. I only know by repute, that is all.

Q. What do you know by repute?

A. Well, I always understood it was one of Mosher's companies.

Q. Was there another Western Manufacturing Company that was regularly incorporated, of which M. D. Welch was an officer, or manager?

118 A. Yes, I think there was.

Q. That was not the company that executed these notes you have in your possession?

A. I think that was not the same company.

Q. You have made inquiry to ascertain if it were, have you, in your effort to ascertain whether these notes were collectible?

A. I think I said the former receivers exhausted their resources in trying to collect these notes, and I have never given them any attention at all. I understood them to be worthless.

Q. Have you satisfied yourself that they are worthless?

A. Yes.

Q. Utterly worthless?

119 A. Yes sir, and always were, that is my understanding.

Q. Do you know that the former receivers exhausted all remedies to collect these notes?

A. Yes, I am very sure they did.

Q. This company purporting to bear the name Western Manufacturing Company, which executed these notes, signed by E. Hurlbut Jr., Manager, was never in fact incorporated?

A. Yes, I think that was the case.

Q. And so far as you were able to ascertain or learn, never had any assets?

A. So far as I have been able to ascertain, none.

Q. And their paper and notes were never of any value?

A. No, never of any value.

Q. You may state, if you know, whether these notes you have produced were ever sold or discounted by the Capital National Bank to anyone?

120 A. They were rediscounted.

Q. You may state, if you know, to whom.

A. I would have to go over each of the notes separately.

Q. To whom generally were they sold?

A. One to the Mystic River National Bank of Mystic, Connecticut.

Q. Did this bank file that note with the receiver, and was it allowed by the receiver as a claim against the Capital National Bank?

— Yes.

Mr. THOMAS: The notary may identify the note and the endorsement as Exhibit "68". (Note so identified.)

Q. I hand you Exhibit "68" and ask you if that is one of the notes concerning which you *had* testified?

A. It is.

Q. And is executed by the Western Manufacturing Company by E. Hurlbut, Jr., Manager?

121 A. Yes, sir.

Q. Was this note negotiated, and to whom?

A. The note itself does not show to whom it was sold.

Q. Does it show that it was sold?

A. Yes.

Q. I will ask you if it was endorsed and guaranteed by the Capital National Bank?

A. It was.

Q. Was this note filed with the receiver as a claim against the Capital National Bank?

A. It was.

Q. Was it allowed by the receiver as a claim against the Capital National Bank?

A. Yes, sir, it was.

Q. For what amount?

A. For \$5,000.00.

Q. And what is the number of the receiver's Certificate?

122 A. 1086, to the Mystic River National Bank of Mystic, Connecticut.

Mr. THOMAS: The notary will identify this note as Exhibit "69".
(Note so identified.)

Q. I hand you Exhibit "69" and ask you if that is one of the notes concerning which you have just testified?

A. It is.

Q. Executed to the Capital National Bank by the Western Manufacturing Company, by E. Hurlbut, Jr., Manager?

A. Yes.

Q. This is, and was, a part of the assets of the Capital National Bank at the time of its suspension?

A. It was.

Q. And is now a part of the assets in your hands as receiver?

A. Yes, sir.

Q. Was this note sold by the Capital National Bank, and sold by the bank and endorsed and guaranteed?

A. It was.

123 Q. Has that note been filed as a claim against the Capital National Bank with the receiver?

A. Yes.

Q. Has it been allowed and a receiver's certificate issued therefor?

A. Yes.

Q. What is the number of the receiver's certificate?

A. 1084, to the First National Bank of Hurley, Wisconsin.

Q. For what amount?

A. For \$5,000.

Mr. THOMAS: The notary will identify note as Exhibit "70."
(Note so identified.)

Q. I hand you Exhibit "70", and ask you if this is one of the notes executed to the Capital National Bank by the Western Manufacturing Company, to which you have just testified?

A. It is.

Q. By whom was that note signed?

A. Western Manufacturing Company, by E. Hurlbut, Jr., M'gr.

Q. Is that now a part of the assets of the Capital National Bank, and was it a part of the assets at the time of its failure?

A. Yes.

124 Q. You may state if that note was sold, endorsed and guaranteed by the Capital National Bank?

A. Yes.

Q. State, if you know, to whom it was so sold and guaranteed?

A. First National Bank of Poultney, Vermont.

Q. You may state by whom the note is endorsed and guaranteed?

A. Capital National Bank.

Q. By its President, C. W. Mosher?

A. Yes.

Q. You may state if that note was filed with the receiver as a claim against the Capital National Bank?

A. Yes.

Q. Was it allowed as a claim against the bank?

A. Yes.

125 Q. For what amount?

A. \$5,000.

Q. Was a receiver's certificate issued therefor, and if so what number?

A. Number 1072, to the First National Bank of Poultney, Vermont.

Q. In your testimony yesterday you referred to notes of the Western Manufacturing Company signed by E. Hurlbut, Jr., Manager, given to the Capital National Bank, and consisting of twenty four notes for \$5,000 each, and two notes for \$2,500. each, three of which were identified as Exhibits 68, 69, and 70. I now hand the remaining twenty three notes to the reporter and ask that they be identified as Exhibits commencing with number 71 and to be numbered consecutively up to and including number 93.

(Notes so identified.)

Q. I now hand you Exhibits numbered from 68 to 93 inclusive, except Exhibit 83, being the notes of the Western Manufacturing Company to which you testified yesterday, and ask you if you are acquainted with the signature of the maker attached to each of those notes?

A. Yes, I think I know the signature.

Q. Whose signature is it?

A. I think it is the signature of E. Hurlbut, Jr.

Q. In what capacity, if any?

A. It is signed Manager.

Q. Manager of what?

A. The notes are signed Western Manufacturing Company, E. Hurlbut, Jr., Mgr.

126 Q. You may state if these notes were executed to and taken into as a part of the assets of the Capital National Bank during its existence?

A. The books of the bank show that they were assets of the Capital National Bank.

Q. By the books of the bank, you mean the books of the Capital National Bank, which are in your hands as receiver?

A. Yes.

Q. And these notes just referred to were taken in by the bank, and carried by the bank during its existence as a part of its assets?

A. Yes.

Q. And these notes above referred to, and now in your hands, are in your possession as Receiver of the Capital National Bank?

A. They are in my hands as trustee.

Q. You may state fully what you mean by that.

127 A. The notes were rediscounted by the Capital National Bank, and they were turned back to the receiver to be collected by him if possible, the receiver issuing certificates for the amount of the notes to their respective owners.

Q. Is the same true of Exhibit number 86, where the original note has been lost?

A. Yes.

Q. And receiver's certificate has been issued for that note in the sum of \$5,000?

— Yes.

Q. Being Receiver's certificate number 1094?

A. Yes.

Q. These notes identified as Exhibits 68 to 93, inclusive were sold by the Capital National Bank prior to its suspension did you state?

128 A. Yes.

Q. Were these notes endorsed?

A. Yes.

Q. You may state if you are acquainted with the signature of the endorsement on each of the notes identified as Exhibits 68 to 93 inclusive?

A. Yes, I think so.

Q. Whose signature *do* each of those exhibits bear, that is, whose endorsement?

A. Endorsed by C. W. Mosher, President, except one note, which is endorsed Mosher & Outcalt.

Q. Which note was that?

A. Exhibit 91.

Q. These notes identified as Exhibits 68 to 93 inclusive had been sold, and were owned by parties other than the Capital National Bank at the time of its suspension and failure?

A. Yes.

129 Q. That is, they were not properly assets of the Capital National Bank at the time of its failure, but had been sold to divers persons, and endorsed and guaranteed by the Capital National Bank?

A. I think I would call them an asset of the Capital National Bank, even though they had been rediscounted. They are guaranteed.

Q. An actual or nominal asset?

A. Well, I suppose it would be largely a matter of opinion.

Q. These notes, had they been sold by the Capital National Bank to other parties?

A. Yes.

Q. And the title to the notes transferred and in these various parties who held the notes?

130-132 A. Yes.

* * * * *

133 Q. And you hold these notes now as trustee for the various eastern parties who own this paper?

A. Yes.

Q. Have these notes been allowed by the receiver as claims against the Capital National Bank?

A. Yes.

Q. For what amount?

A. Exhibits from number 68 to 91 inclusive are for \$5,000 each, and 92 and 93 are for \$2,500. each.

Q. These notes referred to have been allowed for these amounts by the receiver, and have certificates been issued by the receiver for those various amounts?

A. Yes.

134 Mr. THOMAS: We now offer in evidence Exhibits number 68 to 93, inclusive, including the endorsements on the back of each of said notes.

Ex's 68 to 93 received.

WITNESS: I hereby deliver the notes to the Notary to be attached to my deposition, but demand of the court that after the trial the notes be detached from the deposition and returned to me, free of expense.

* * * * *

135-141 Q. Are you able to state what items of the Capital National Bank's assets came into the hands of the receiver following its suspension?

A. Yes.

Q. Are you able to state what amounts have been realized by the receiver from these assets of the Capital National Bank?

A. Yes.

Q. Are you able to state the amount of liabilities against the Capital National Bank allowed by the receiver?

A. Yes.

Q. Are you able to state the amount of dividends that have been paid by the receiver to the creditors of the Capital National Bank on their several claims?

A. Yes.

* * * * *

142-145 Q. And are you able to state from an inspection of the books as they have been verified by your frequent exami-

nation of them, and comparing them with the actual condition of the receivership, as to what assets came into the hands of the receiver upon the failure and suspension of the bank, and what has been realized on them, what the liabilities of the bank were as allowed by the receivers, and what amount has been paid to the creditors on their various claims?

A. Yes.

Q. In other words, you have examined the entire books of the receivers, and have gone over them so frequently, that you know of your own personal knowledge that they correctly state and reflect the condition of the Capital National Bank while in the hands of the receivers at the time the various entries were made?

A. Yes, sir.

* * * * *

146 By Mr. THOMAS:

Q. I now repeat my original question, and ask you to state from an inspection of the books referred to what amount of assets came into the hands of the receiver classed as cash items on the books?

A. Do you want the aggregate, or do you want it in its two classifications?

Q. You may give it in its two classifications.

A. Cash items, good, \$12,531.27; cash items, worthless, \$799.41.

Q. Now you may state, if you know, the amount of cash of the Capital National Bank that came into the hands of the receiver at the time of the suspension of the bank, or following the suspension of the bank; that is, at the time the receiver took possession of the assets.

A. \$15,385.87.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver immediately following the suspension of the bank, classed as "overdrafts".

A. Doubtful, \$17,834.63; worthless, \$15,932.57.

Q. Total how much?

A. \$33,767.20.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver of the bank indicated on the books as bills of exchange?

A. Good, \$3484.94; doubtful, \$1453.08; worthless, \$53.95; total \$4997.97.

Q. You may state, if you know, the amount of assets that came into the hands of the receiver of the bank indicated on the books as furniture and fixtures.

148 A. \$300.

Q. You may state the amount of assets which came into the hands of the receiver of the bank classed on the books as stocks and bonds.

A. \$325.

Q. You may state the amount of assets that came into the hands of the receiver of the bank classed as excess bonds?

A. \$5,000.

Q. You may state the amount of assets that came into the hands of the receiver of the Capital National Bank, which consisted of bills receivable, or notes?

By COUNSEL FOR DEFENDANTS:

Q. Let me inquire what book are you examining to ascertain that?

A. I am examining the record, the receiver's record.

Q. Receiver's books?

A. Yes, sir.

149 A. The good are \$298,325.39; doubtful, \$155,560.84; worthless, \$397,073.63; total, \$850,959.86.

By COUNSEL FOR DEFENDANTS:

Q. In this amount is there included bills receivable or notes which had been rediscounted or sold, and which were merely held by the receiver as trustee for the various holders of the discounted paper?

A. All the rediscounted paper is included.

Q. Now you may state how much rediscounted or sold bills receivable was included in the sum of \$298,325.39 to which you have testified?

A. \$187,270.56.

Q. You may state how much rediscounted or sold bills receivable is included in the sum of \$155,560.84, to which you have testified?

A. \$29,375.14.

Q. You may state how much bills receivable or notes rediscounted or sold are included in the sum of \$397,073.63, to which you have testified?

150 A. \$114,714.16.

Q. Have you computed the total of rediscounted or sold notes?

A. \$331,359.86.

Q. Then, in order to ascertain the actual amount of bills receivable or notes on hand at the time of the failure, and which came into the possession of the receiver, this sum of \$331,359.86 should be deducted from the total of \$850,959.86 of bills receivable shown to be on hand?

A. No, I don't think it should be deducted.

Q. This sum of rediscounted or sold notes amounting to \$331,359.86 represented notes or bills receivable of the Capital National Bank which had been sold and endorsed by the bank, and which at the time of the failure of the bank were owned by various parties other than the bank, and was not a part of the bank's notes? State if that is correct?

A. Well, as a matter of bookkeeping that would have to be included with the bank's notes.

Q. As a matter of fact, did the bank own those notes at the time of its failure and suspension?

151 A. No, they did not.

Q. Then in order to ascertain the true and actual amount of notes or bills receivable which the bank owned at the time of its suspension, the amount of these rediscounts, amounting to \$331,-

359.86 should be deducted from the total of \$850,959.86 should it not?

Q. Yes, if you deduct that same amount from the liabilities of the bank; otherwise not.

Q. Are not those rediscounts, amounting to the sum of \$331,359.86 liabilities of the bank, whether or not they would be a part of the bills receivable or not, by reason of the endorsement and guaranty of the bank?

A. Oh, no. You can't have the cake and eat it too.

Q. Is it true that these amount- of notes had been rediscounted and were outstanding as a liability of the Capital National Bank by reason of their endorsement and guaranty?

152 A. Yes, sir.

Q. And is it true that they were allowed by the receiver as a claim against the Capital National Bank?

A. Yes.

Q. And is it true that if the amount of these rediscounts or sold notes is worthless, that in that event the bank would be liable for the rediscounts on account of its guaranty, but would receive nothing from the collection of the notes?

A. Yes, that is true.

Q. Then, if these rediscounts, amounting to \$331,359.86 are worthless, or were worthless, and nothing was realized upon them by the receiver, then they would not be valuable assets; yet notwithstanding that fact the amount of those rediscounts would still be liabilities of the bank by reason of their endorsement and guaranty by the bank?

A. I don't assume that they were worthless assets.

Q. I am assuming that now.

A. You can't assume anything of that kind in making up these statements. The receiver has assumed this with a whole lot which he has classed as worthless.

153 Q. If those rediscounts were worthless the result would be as in the former question asked?

A. No, no, as long as this paper is an obligation against the bank you must certainly class the bills as an asset, otherwise your books will not balance.

Q. That is true as a matter of bookkeeping, but if that asset were worthless, it would not affect the liability of the bank upon its endorsement or guaranty?

A. If you are getting at the value of the bills, then there might be something in your point, otherwise not.

Q. If we are getting at the value, the point is well taken, you think?

A. The value of the bills rediscounted would be a matter to go into just exactly as the bills which they had on hand. They must all go together, you cannot segregate them at all.

Q. These claims that have been filed against the Capital National Bank with the receiver on account of rediscounts have become charges or claims against the bank by reason of the fact that they

were guaranteed by the Capital National Bank; state whether or not that is true.

154 A. Yes, that is true.

Q. The liability has been incurred by reason of the endorsement and guaranty of the Capital National Bank?

A. Exactly, and the guaranty would be exactly the same if all of these banks to whom these bills were rediscounted had simply made a deposit in the Capital National Bank of the amount. It would not be exactly the same, either, there would be a double liability there.

Q. I think that answers that. Now you may state what assets were acquired by the receiver after the suspension of the bank?

A. Doubtful, \$11,510.49; worthless, \$19,428.91; good, \$27,972.04 making a total of \$58,911.44.

Q. Is there anything under this head classed as real estate?

A. Yes.

Q. You may state how much assets the receiver has received under this head?

155 A. \$86,975.

Q. You may state if the receiver has come into possession of any assets that accrued after the failure of the bank and its suspension?

A. Yes.

Q. You may state, if you know, the amount?

A. \$11,065.75.

Q. From what source was that received?

A. Oh, well, that was from various items, rent and interest; oh, no, this is rent. I have another account——

Q. It consists of rent derived from real estate accruing after the failure of the bank?

A. Yes.

Q. What other account have you under this head?

A. Interest account.

Q. You may state, if you know, how much was realized from that source.

A. \$10,498.93.

Q. That was realized on interest accruing after the failure of the bank was it not?

A. Yes.

Q. You may state Mr. McDonald, if anything was realized by the receivers from any other sources?

A. Stock assessments.

Q. You may state, if you know, how much was realized from stock assessments?

156

A. \$155,598.20.

Q. You may state what that consisted of, and how it was obtained?

A. An assessment of 100 per cent was levied on the stock.

Q. By whom was that levied?

A. By the Comptroller, and that much was paid.

Q. What was the purpose of the assessment?

A. To make up the deficiency in the assets.

Q. What made that necessary?

A. Because the law required it under the showing, I suppose.

Q. Under what showing?

A. They make up as soon as possible after the failure of a bank, as soon as the receiver becomes familiar with the assets, he makes an estimate of their value, and on that the assessment is made, if any. I presume it was so done in this case, but I don't know.

157 Q. After the receiver takes charge of the assets, if it is found that the assets are not sufficient to pay the liabilities an assessment is made on the stockholders?

A. Yes, sir.

Q. Now the amounts, referring to the assets on hand at suspension, to which you have testified, were the nominal value of those assets at that time, and not the actual value; state whether or not that is correct.

A. I have no knowledge of that at all. I was just telling you the custom that prevailed with failed banks. This deficiency statement was made up long before the time I had any connection with it, and I presume,——

Q. You stated in your examination this morning you knew how much had been actually realized from the various assets of the bank; I will now ask you to state, if you know, what was realized in cash by the receiver upon assets known as "other than bills receivable"?

A. From "other assets" which is the term used in our reports there has been collected the sum of \$33091.31.

158 Q. You may state what items comprise this sum of \$33,091.31?

A. Cash, \$15,385.87; furniture and fixtures, \$300; stocks and bonds \$325; excess of bonds, \$3250; Cash items, \$4280.85; Bills of Exchange, \$4778.02; Overdraft \$4771.57.

Q. Now you may state, if you know, what was realized by the receivers from bills receivable or notes of the Capital National Bank?

A. \$229,520.82.

Q. Can you give the items comprising that amount?

A. Well what do you mean, under what classification they are, and whether good or not?

Q. Yes.

A. Yes, I guess I can. \$210,462.07 good.

Q. Of this amount of \$229,520.82, which you say is the total received from bills receivable, you may state how much of that, if any, was collected for bills rediscounted, or notes that had been sold to other parties, and which were collected by the receiver merely as trustee for the various holders?

159 A. I could not tell that without going over the account in my ledger under the head of "loans paid and other disbursements" and picking out all of those items.

(Witness goes over account.,

Q. If you have gone over that account as stated, you may give the necessary information.

A. I find that loans paid and other disbursements account shows

that there was paid for rediscounted paper collected \$188,020.56, which being deducted from the sum of \$229,520.82 would give the amount realized on bills receivable belonging to the bank.

Q. Now you may state, if you know, how much was collected and realized by the receiver on account of "assets acquired after suspension"?

A. \$105,902.95.

Q. Now you may state how much, if any, of this was realized from rents which accrued during the receivership?

A. Not any of it.

Q. That consisted of assets classed on the books as "other assets, both good, doubtful and worthless"?

A. Yes, sir.

Q. Now you may state how much was received by the receiver on account of rents which accrued after the suspension of the bank and during the existence of the receivership?

160 A. From premium, interest, rents, \$20,299.53.

Q. The portion of this which comprises interest refers to interest which accrued after suspension?

A. Interest collected after suspension. I think it is possible that a little of it may have accrued prior to suspension.

Q. Can you give the items of rents and interest separately?

A. Yes, I think so. I find I am mistaken, that I gave the wrong amount. It is \$21,564.68.

Q. And are there any deductions there for offsets?

A. The amount should be \$21,549.56.

Q. Was any of that for premium on bonds?

A. No, that is just a name given the account, it is all for interest and rents.

Q. Accruing after suspension?

A. Well, mostly. I would not like to say that a small amount of interest might not have accrued prior to suspension.

Q. Substantially?

A. Yes.

Q. How much was realized by the receiver on account of assessments which were levied on stockholders, as referred to in a former portion of your testimony, in accordance with the order of the controller?

161 A. \$155,598.20.

Q. Now is that all the moneys that have been received by the receivers from the assets of the Capital National Bank and the assessment on the stockholders since its failure on January 21, 1893, to this date?

A. Yes.

Q. Out of this amount, what disbursements have been made by the receivers, if you know?

A. Loans paid and other disbursements, \$59,764.59.

Q. Now you may state what was the nature of these disbursements, what they were for?

A. Into that account is charged all moneys paid out for the betterment of the assets. No expenses are charged in that account.

Where taxes are paid, or repairs made to the property or a loan on a property is paid off; anything that betters the asset goes into that account.

162 Q. It does not include any general liability of the bank filed as a claim with the receiver?

A. No.

Q. What other items of expenditures or disbursements have been made by the receiver?

A. I have paid out in dividends \$211,300.93.

Q. That is the total amount of dividends that have been paid to the creditors of the Capital National Bank up to date?

A. Yes, sir.

Q. What other disbursements have been made by the receiver?

A. Legal expenses, \$49,616.33.

Q. What other amounts?

A. Receiver's salary, \$20,985.

Q. Any other expenses, if so state.

A. Under the head of other expenses has been paid \$12,774.41.

Q. Are those all of the disbursements that have been made by the several receivers?

A. Yes, sir.

Q. You may state how much, if anything, is on hand in your hands, or with the Comptroller of the Currency, belonging to the assets of the Capital National Bank?

163 A. \$3261.02.

Q. You may state if you know what are the amounts of the various liabilities that have been allowed against the Capital National Bank?

A. Yes, I do.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure to various national banks as allowed by the receiver?

A. \$47,759.56.

Q. You may state what was the amount of the liabilities of the Capital National Bank at the time of its failure to various state banks, and which amounts were allowed by the receivers and receivers' certificates issued therefor?

A. \$114,349.62.

164 Q. The item to which you referred previous to this comprising \$47,759.56, this has been allowed by the receiver, and receivers' certificates issued therefor?

A. Yes.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure on account of individual deposits which were allowed by the receiver and receivers' certificates issued therefor?

A. \$392,639.64.

Q. You may state what were the liabilities of the Capital National Bank at the time of its failure on account of certificates of deposit outstanding, and for which claims were allowed and receivers' certificates issued therefor?

A. \$517,999.49.

Q. Now you may state what were the liabilities of the Capital National Bank at the time of its failure for bills receivable or notes which had been sold, endorsed and guaranteed which were allowed by the receiver as claims against the bank and receiver's certificates issued therefor?

165 & 166 A. \$331,359.83

Q. Now you may state if there were any other claims that the Bank was owing at the time of its suspension that were presented to the receiver, allowed by him, and receiver's certificates issued therefor, and if so state the nature of the claims and the amount allowed.

A. I know the total number of certificates allowed, the total number issued. When you divide that up the way you have here it becomes confusing.

Q. Consisting of what?

A. Also an item of \$5500., and one of \$954; claims in dispute \$13,290.94.

Q. Is that all the liabilities, excepting the capital stock, Mr. McDonald?

A. Yes, I think so.

Q. And the capital stock was how much, at the time of its failure?

A. \$300,000.

Q. That was classed as a liability?

A. Yes.

* * * * *

167 Q. You may state, Mr. McDonald what notes of the Western Manufacturing Company, signed by E. Hurlbut Jr., as manager came into the hands of the receiver as part of the assets of the Capital National Bank, and which were a part of its assets at the time of its failure, other than those to which you have testified as having been rediscounted or sold and came to you merely as trustee for the various holders?

A. I don't know without looking it up.

168 Q. You may look it up and state?

A. \$125,000.

Q. Were there not some additional ones amounting to \$25,000 more, making a total of \$150,000 all together, that were turned over to Cobb & Harvey, attorneys for the receiver, and by them placed in judgment against the Western Manufacturing Company?

A. \$125,000 is all the books show; that is all that I know, just what the books show.

Q. You would not be certain that there was not \$150,000 all together?

A. I am very certain there is not, because the books would show it if there was, and the books tally with the copies of the notes I have. I have \$125,000 in notes given to Cobb & Harvey, and that corresponds with the record, and I presume that is correct.

Q. Has anything been collected on these notes, any of them?

A. No.

Q. Will your testimony with reference to the notes of the Western

Manufacturing Company which had been rediscounted apply to these notes which had not been rediscounted, as to their value?

A. Yes.

169 Q. Is this the same company to which you testified as having executed the notes signed Western Manufacturing Company by E. Hurlbut Jr., Manager, and which had been rediscounted, and are now in your hands as trustee for the various holders?

A. Yes.

Q. And were those notes ever of any value?

A. I think not.

Q. Are those original notes in your possession now?

A. No, judgment has been taken on them.

Q. To whom were the notes delivered?

A. Turned over to Cobb & Harvey.

Q. As attorneys for the receiver?

A. Yes.

Q. And have the attorneys reduced them to judgment, if you know?

A. Yes.

Q. Now you may state what bills receivable, if any, came into the hands of the receiver as assets of the Capital National Bank, at the time of its failure of Charles W. Mosher its president?

170 A. \$85,281.67.

Q. Have you succeeded in collecting anything on those notes?

A. No.

Q. They still remain in your hands unpaid and uncollectible?

A. Yes.

Q. You may state what notes of Edwin W. Mosher, or E. W. Mosher, if any, came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?

A. \$107,085.45.

Q. Are those notes still in your possession as receiver?

A. Yes.

Q. Has any part of those notes, any portion of them, been collected?

171 A. Yes.

Q. How much?

A. On one note, on note numbered 134007 for \$12,730.01, there has been \$9426.60 paid.

Q. When was that paid, and by whom?

A. Well, that was paid April, 1893, from the sale of horses.

Q. Was that note secured by a mortgage on horses, which was foreclosed and the proceeds applied on this note?

A. Yes, I believe so.

Q. Is that all that has been realized on any of those notes of Edwin W. or E. W. Mosher?

A. Yes.

Q. You may state what notes of R. C. Outcalt, or Richard C. Outcalt, if any, came into the hands of the receiver as assets of the Capital National Bank at the time of its failure?

A. \$54,166.66.

Q. Are those notes still in your possession as receiver?

A. No, they are not.

Q. Do you know where they are?

A. Why, they were turned over to the attorneys in trust for collection.

Q. They are still in your control as receiver, and part of the nominal assets of the Capital National Bank?

A. Yes, what I meant was that the original notes are not in my hands.

Q. Has any portion of those notes been collected?

172-174 A. On one note there has been an offset of \$570.99.

Q. What note is that?

A. Note of \$6240.

Q. Have any portion of those notes been collected?

A. No.

* * * * *

175 Q. You may state what note if any, of the Sycamore Marsh Harvester Company came into the hands of the receiver as a portion of the assets of the Capital National Bank at the time of its failure?

A. \$4500.

Q. Is that note in your possession or under your control as receiver of the Capital National Bank?

A. Yes.

Q. Has any part of it been collected?

A. No.

Q. You may state if the note of Marsh & Hinds came into the possession of the receiver of the Capital National Bank as a part of the assets of the bank at the time of its failure?

A. \$1000.

Q. Is that in your possession as receiver as a part of its assets?

A. Yes.

Q. Has any part of it been collected?

A. No.

Q. You may state what notes, if any, signed by the Marshes C. W., and W. W. Marsh, came into the hands of the receiver as a portion of the assets of the Capital National Bank at the time of its failure?

176 A. I find one note of \$3600 signed by C. W. and W. W. Marsh; one note of \$9,000 signed by Marsh Binder Manufacturing Company; and one note for \$200 signed by James Marsh.

Q. Are those notes in your possession as receiver of the Capital National Bank, and a part of its assets?

A. Yes.

Q. Has any part of them been collected?

A. No.

* * * * *

177 Q. Among the assets of the Capital National Bank which came into the hands of the receiver, was there an item consisting of overdrafts of the bank at the time of its suspension?

A. Yes.

Q. You may state if among those items of overdrafts there was one of C. W. Mosher, president of the bank?

A. Yes.

Q. For what amount?

A. \$2927.59.

Q. Was there one of Mosher & Outcalt, the president and cashier of the bank?

A. Yes.

Q. For what amount?

A. \$8983.36.

Q. Was there one of J. E. Hurlbut, Jr.?

178 A. Yes.

Q. For what amount?

A. \$1756.09.

Q. Was there one of the Western Manufacturing Company, of which Hurlbut was manager?

A. Yes.

Q. What amount?

A. \$1361.79.

Q. Was there one of Stark & Mosher?

A. Yes.

Q. For what amount?

A. \$1691.84.

Q. Are these items of overdrafts still in your possession as a nominal asset of the Capital National Bank?

179-185 A. Yes.

Q. Has any portion of them been collected?

A. No.

* * * * *

186-205 Q. I hand you certificates of deposit identified by the notary as Exhibits 109 to 146 inclusive, and ask you to state if these are some of the papers and documents of the Capital National Bank that came into your possession as receiver, and are now in your possession as receiver of the Capital National Bank?

A. Yes.

Mr. THOMAS: We offer in evidence Exhibits 109 to 146, inclusive.

206-217 Exhibits 109 to 146 Inc., received in evidence.

* * * * *

218 Q. You have in your possession certificates of deposit of the Capital National Bank, which have been identified by the Notary as Exhibits from 147 to 923½ inclusive?

A. Yes, sir.

Q. Are those certificates of the Capital National Bank outstanding and unpaid at the time of its failure?

A. Yes.

Q. Were those certificates filed with the receiver?

A. Yes.

Q. And you may state if the amount called for by each of those certificates was allowed by the receiver?

A. Yes.

Q. Was a receiver's certificate issued representing the amount called for in each of those certificates you have identified?

219-253 A. Yes.

Q. Have the certificates referred to as Exhibits 147 to 923 1/2 inclusive been compared with the receiver's records to ascertain whether they agree with the amounts shown by the books of the receiver as having been allowed on the certificates?

A. Yes.

Q. And have the amounts specified in each of those certificates and for which they were each issued, been allowed by the receiver as a claim or charge against the Capital National Bank?

A. Yes.

* * * * *

254-272 Mr. NORVAL: We offer in evidence the deposition of RICHARD C. OUTCALT, as found in the Bill of Exceptions of the former hearing, Volume 3, at page 145 thereof.

* * * * *

273 Q. Now were there any minutes that you know of that were not kept in this book?

A. I don't remember.

Q. These minutes, so far as they go, are correctly stated?

A. So far as I know.

* * * * *

Plaintiff's now offer in evidence the following pages of Exhibit "26" which has been identified by Mr. Outcalt, namely: commencing at page 11, and continuing to and including page 67, and intermediate pages.

Exhibits offered received and read in evidence.

Q. Now, Mr. Outcalt, we hand you the following books of the Capital National Bank, identified by the notary as Exhibits 1 to 64 inclusive, and from 94 to 108, inclusive, and ask you to state if those are the books, records and documents of the Capital National Bank, the Marsh National Bank, and Marsh Brothers Mosher & Company?

A. Yes, these are the books.

Q. Those are the books in which the business of those several banks was kept and entered during the existence of the several banks referred to?

274-277 A. Yes, those are the same books.

Q. And all of the transactions of these several banks is contained in these various books you have identified?

A. Well, if you have a book missing, the transaction would not be in there.

Q. All you have identified were used by the bank in regular and ordinary transaction of its business?

A. Yes.

* * * * *

278 Deposition of LUTHER P. LUDDEN offered and read in evidence on behalf of the Plaintiffs, as follows:

Read by Mr. NORVAL:

Q. State your name, age, vocation and residence, giving street number.

A. Luther P. Ludden, 48 years old; 1336 D street, Lincoln, Nebraska; Clergyman.

Q. What church?

A. Lutheran church.

Q. At Lincoln?

A. At Lincoln. The church is located at 14th and F streets.

Q. How long have you resided in Lincoln?

A. Nearly thirteen years.

Q. You may state what official position you held in connection with the Nebraska State Relief Commission in the winter of 1890 and 1891?

A. I was a member of the board, and by the board made secretary and manager of the commission.

Q. And what relation did you sustain to the auditing committee?

A. I was chairman of the auditing committee of that board.

Q. You may state what funds, if any, were received from the state for the use of the Nebraska State Relief Commission at that time?

A. The legislature made two appropriations, one of \$100,000 cash from the treasury, and one of \$100,000 bonds. House Roll 79 was the cash, and 81 was the bonds.

Q. The cash was drawn by warrants on the state treasurer?

A. Yes, sir.

279 Q. The other \$100,000 was by——

A. The bonds was turned over to the commission under the law, and sold by the commission, and the funds received therefrom deposited to our credit.

Q. Do you know whether or not the bonds were sold at a premium?

A. We received \$250 premium.

Q. Then the amount received by the commission from the sale of bonds was \$100,250.

A. Yes, sir.

Q. You may state if you know, where these funds were deposited. In what bank in Lincoln?

A. They were turned over by me to Mr. Mosher, the treasurer and he claimed to have deposited them in the Capital National Bank.

Q. What Mosher do you refer to?

A. C. W. Mosher, a member of the commission, and treasurer.

* * * * *

280 Q. You may state how the commission received this first \$100,000 cash appropriation, in what way?

281 A. In state warrants from the state treasurer, two of them for \$25,000 and one for \$50,000.

Q. From whom did you get the warrants, the state treasurer or the auditor?

A. I think they were delivered to me by the state treasurer. I think I took them over and had them signed.

Q. You mean registered?

A. No, to have them signed. We do not register them. We disposed of them without registering.

Q. How did you dispose of them?

A. They were sold to John L. Carson.

Q. Who sold them?

A. I sold them to him, that is the board directed that they be turned over to Mr. Carson.

Q. What amount did you derive from the four warrants?

A. We received par for them.

Q. And what was done with the funds?

A. That money was turned over to Mr. Mosher, personally.

Q. At what place of business?

A. Two I paid right in the bank, and for one I gave him a check in our rooms; he was present at the meeting.

Q. At the Capital National Bank?

A. Two of them, and one was paid to him in the commission rooms in the state house.

Q. Can you give the dates?

A. The two warrants were turned over about the 24th or 25th of February, about that time in February,—about the 25th, and the third warrant of \$50,000 was drawn somewhere about the 13th of March. I could not look them up because our books are destroyed.

I give you my best recollection of them.

282-286 Q. The last \$50,000 was paid by warrant drawn on that day?

A. Yes sir; I am not sure whether it was one or two warrants. They were drawn to accommodate the parties who took them. We received \$50,000 in warrants on or about the 13th day of March, 1891.

Q. And the amount may have been in two warrants of \$25,000 each?

A. Two or four, I would not say as to that. I presume the warrants are in existence somewhere, and they are the best evidence. I would not put my memory against written evidence.

Q. Was this money all checked out of the Capital National Bank, this \$200,000?

A. No sir.

Q. What amount was checked out?

A. We had, in addition to this something like \$800 in cash donations. It was all put in one fund, and we had something like \$3551., left. I have not looked up the amount for two or three years.

Q. Then the \$200,000 that was appropriated was all paid out by vouchers on the bank except how much?

A. Except the \$3551.00. My impression is that it was either thirty-five or thirty-three hundred and fifty one dollars. It was over \$3,000.

* * * * *

287 Mr. NORVAL: Plaintiffs offer to read in evidence from the Bill of Exceptions in the former case the testimony of S. K. HALE.

Direct examination.

Read by Mr. NORVAL:

Q. You may state your name, age and place of residence.

A. S. K. Hale: I am getting pretty old; I live in the city of Lincoln, and will be 54 years old in November. I live at Number 1519 "O" street, Lincoln, Nebraska.

Q. How long have you resided in Lincoln?

A. Oh, I have been in Lincoln anywhere from 26 to 28 years. I don't remember just when I did come here; twenty five years anyway.

Q. What in general you may state has been your occupation during your residence in Lincoln?

A. Well, I have been engaged in several different kinds of occupations. When I first came I was with A. D. Marshall & Company. They were in the coal and wood business and handled some grain. I kept their books one winter. Afterwards I took the business of F. H. Halsey of Atchison, Kansas, and I took care of his business there for six or eight months. He was in the same business, but handled grain largely. And from there I was connected with T. W. Lowrey, I think those are the initials,—Tom Lowrey. I kept his books about six months, I think it was. Then, the next place I went was to what they called the collection office of the Marsh Harvester people down here, (indicating), and it eventually drifted into the Capital National Bank; that is where it started; that was the foundation of it.

Q. About when was it that you entered the employ of the Marsh Harvester Company, I believe you stated that was the name?

288 A. I don't exactly remember how long I was there, but I should say it was anyway ten or 12 years; I think the bank failed in 1892.

Q. 1893?

A. 1893, well, you might say twelve years, I guess. I know I was there that long.

Q. What was the name of the firm in whose employ you first entered?

A. Marsh Brothers, Mosher & Company, if I remember correctly, was the name when I first went with them.

Q. And in what business were they engaged?

A. Well, they were engaged in the Banking business to some extent, and largely collections. The heavy part of the business was collections for the Marsh Harvester Company, which was running all over this country at that time. Of course when I went with them, they had simply only started, and their banking business was somewhat light outside of the collections.

Q. How long did this firm of Marsh Brothers, Mosher & Company continue to exist under that name?

A. That I am unable to tell you. Let me think a minute. I won't be positive, but it does occur to me that there were two changes

in the name of the bank before it eventually became the Capital National Bank, and the other one,—it has slipped my memory. I don't remember the style of the firm now.

Q. To refresh your recollection, I ask you if it was the Marsh National Bank?

A. Yes. First Marsh Brothers, Mosher & Company—

Q. How long did it continue to operate under that name?

A. Well, according to this book, it would be June, 30th, 1883.

Q. What book is that you refer to?

289 A. This is General Ledger No. 1, Marsh Brothers, Mosher & Company.

Q. And identified by the reporter as Exhibit "9"?

A. Yes sir, that is what he says there.

Q. In what name did it operate after that?

A. After that, the Marsh National Bank.

Q. When did it commence to go under that name?

A. It starts here according to dates, July 2, 1883.

Q. Now, when the business changed from Marsh Brothers, Mosher & Company to the Marsh National Bank, you may state if a new set of books was opened?

A. Yes sir, it seems to be a new book here.

Q. I will ask you if Exhibit Number "10", being Ledger Number 1 of the Marsh National Bank is the new ledger that was opened up at that time?

A. Yes sir.

Q. Are both the ledgers of Marsh Brothers, Mosher & Company and the Marsh National Bank, to which I have referred, in your handwriting, and were they written by you?

A. Part of this I know, these are my figures here (indicating).

COUNSEL FOR DEFENDANTS: What look is that?

A. In the ledger of Marsh Brothers, Mosher & Company.

Q. I will ask you to state Mr. Hale, where the balances that appear in red ink at the commencement of each new account in the Marsh National Bank ledger were taken from, if anywhere, if you know?

A. This balance there is Donnell, Lawson & Simpson, of New York. It was taken from General Ledger Marsh Brothers, Mosher & Company Number 1.

290 Q. And transferred to what book?

A. Transferred to Ledger 1, Marsh National Bank, on page 147.

Q. Now you may state what the figures in red ink on the first line from the top on page 147 of the Marsh National Bank Ledger, "149" refer to?

A. They refer to the page where this balance was taken.

Q. They refer to the page of Marsh Brothers, Mosher & Company's Ledger, from which it was transferred to the ledger of the Marsh National Bank?

A. Yes, sir.

Q. And referring to the ledger of Marsh Brothers, Mosher & Company, on page 149, on the last line but one of that page, where the

following appears:—"Balance, 147 7301.32", you may state what the figures 147 referred to?

A. They refer to the page on the Marsh National Bank ledger Number One.

Q. Do you find other accounts that have been transferred from the Marsh Brothers Mosher & Company ledger to the Marsh National Bank Ledger?

291 A. Yes sir, I have before me the Commercial National Bank of Chicago, which is transferred in the same way as the other.

Q. Do you find any other accounts that were transferred in this same manner?

A. Yes, sir.

Q. You may examine the two books, and state, if you can, whether accounts generally were transferred from Marsh Brothers Mosher & Company Ledger to the ledger of the Marsh National Bank?

A. Yes, those that I have examined here have been transferred from Marsh Brothers Mosher & Company to the Marsh National Bank.

Q. The transfers are in your handwriting?

A. Yes sir, those that I have examined so far.

Q. Are these ledgers some of the books that were kept by you while you were in the employ of Marsh Brothers Mosher & Company and the Marsh National Bank?

A. They are.

Q. You may state whether these transfers were made at or about the time the Marsh Brothers Mosher & Company formally became the Marsh National Bank?

A. Yes, I should say they were.

Q. Now, you may state if the assets, liabilities and accounts of Marsh Brothers Mosher & Company were transferred to the books of the Marsh National Bank, and became the assets and liabilities of the Marsh National Bank?

292 A. They were.

Q. I now call your attention to the account indicated as Stock & Bond Account, found on page 4 of Exhibit "10", being Ledger 1 of the Marsh National Bank, and ask you if you made the transfer of this account to this book from Ledger 1, Marsh Brothers Mosher & Company, page 639, being Exhibit "9"?

A. That is my writing, yes sir.

Q. Did you make the transfer from the one book to the other indicated?

A. I evidently did. Those are my figures.

Q. Is the balance on the first line of page 7, Ledger 1, Marsh National Bank, which reads as follows:—"July 2, Balance, 540", in the same condition as when you originally made it?

A. No sir, it certainly is not.

Q. You may state what, if anything, has occurred?

A. Why, there seems to be \$50,000 off of it.

Q. You may state how that was taken off?

A. That I can't do.

Q. I will ask you to state in what physical manner it was taken off?

A. It has been done by an eraser, you know, scratched off.

Q. You may examine the account in the same Ledger 1, of the Marsh National Bank, known as Bills Receivable, and found on page 15, and state if there has been any change in the balance brought forward on the top of that page since you made it?

293 A. Yes sir, there has been a change made.

Q. You may indicate or state what change has been made.

A. There has been an addition there of \$30,000.

Q. You may state how that change was made.

A. The change has been made by erasing the figure 4 and inserting the figure 7.

Q. Was that change made by you, Mr. Hale?

A. Well, that is something I could not be absolutely positive of.

Q. I hand you Exhibit number "1", being Journal of the Marsh National Bank, and ask you to examine this book and state if you find in it any entry, the effect of which would be to eliminate or take from the Stock & Bond Account the sum of \$30,000 just referred to?

A. Stock & Bond Account does not appear here on this date anywhere, I see nothing.

Q. I will ask you to state from where, if anywhere, the items that appear on this book known as Ledger 1 of the Marsh National Bank are taken?

A. This is posted from the Journal onto the ledger.

Q. Are all the entries that appear on the ledger copied from entries that are made on the journal?

A. Yes sir, all that are in writing are.

Q. State if any entries can properly be made on the ledger that are not taken from the corresponding journal on that date?

294 A. No sir.

Q. Then you may state if the account of Stock & Bonds, or any other accounts, could be decreased or diminished unless there was an entry to that effect in the journal; by that I mean properly increased or diminished?

A. Well, no, I would say not, properly.

Q. During the time that you were keeping these books, you may state if you made any entries on the ledger, or made any changes in the figures on the ledger that were not justified or indicated by corresponding entries on the journal?

A. No sir, not to my knowledge.

Q. Do you find anything upon the journal shown you that would justify the change of the balance of the Bills Receivable account, taken from the Ledger of Marsh Brothers Mosher & Company at \$248,029.33 and transferred to the Marsh National Bank at \$278,029.33.

295 A. I do not.

Q. Now, I will ask you whether or not you made the change in Bills Receivable Account by which this was increased the

sum of \$30,000 in transferring it from the Ledger of Marsh Brothers Mosher & Company to the ledger of the Marsh National Bank?

A. No sir, I don't think I did.

Q. I hand you now, Mr. Hale, Exhibit "18" and ask you to state if that is one of the books of the bank kept by you while you were in its employ?

A. Yes sir, it is.

Q. What is that book known as?

A. That is known as a daily balance book, of the Marsh National Bank, it says here; the cover is off.

Q. You may state if you were in the employ of the Marsh National Bank during the entire time it existed and did business in the name?

A. Of the Marsh National Bank?

Q. Yes.

A. Yes, sir.

Q. You may state if you were in the employ of the Capital National Bank during all of the time of its existence?

A. I was.

Q. Were you in its employ at the date of its failure?

A. I was.

Q. State generally what books you kept during the time you were in the employ of these three banking firms, or corporations?

A. I kept what was termed the general books of the bank; this daily balance book, cash journal, ledger, and balance book.

Q. Are these the books you have referred to and examined during your examination?

296 A. Those are a part of them.

Q. Is the book, Exhibit "18," I hand you one of the books of the bank which you kept?

A. Yes, sir.

Q. I will ask you to examine this book, commencing on page under date July 2, 1883, and state if you find any changes or alterations in any of the figures since the entries therein were made by you?

A. I do.

Q. You may note some of those changes.

A. There is this here in stock and bond account.

Q. Under what date?

A. July 2, 1883.

Q. What is the nature of the change?

A. There seems to be a change of \$30,000, taken from stock and bond account and added to Bills Receivable account.

Q. In what manner was that change effected?

A. Simply taken from one account and added to the other.

Q. Do you mean erased or scratched out?

A. Yes, erased from stock and bond account, and the original figures in Bills Receivable erased and \$30,000 added to it.

297-299 Q. Thereby increasing the Bills Receivable \$30,000?

A. Yes, sir.

Q. The Bills Receivable account on that date is indicated in what manner?

A. "B-R."

Q. You may follow these two accounts, stock and bond account and Bills Receivable account, and note during how many days these changes occur?

A. From July 2, 1883 to July 27, 1883.

Q. Inclusive?

A. Inclusive, yes sir.

Q. Now I will ask you to examine the account of Bills Receivable on this same book, and state during how many days these changes are made in that account?

A. Twenty-two days if I count correctly, and I guess I do. I can give it in another way; from July 2, 1883, to July 27, 1883, inclusive.

Q. What is the general nature of this book you have referred to as a general balance book; what accounts were kept in it?

A. I can read them off.

Q. Just in a general way?

A. Capital stock, bills receivable, expense accounts and I think interest paid, and interest account, and such things as that.

Q. Did this book contain the accounts for the individual depositors?

A. No sir.

Q. Where was that kept?

A. That was kept in the individual deposit ledger.

Q. Where were the accounts with the country banks kept?

A. Well, they were kept,—just wait a moment. They were also kept on a deposit ledger.

* * * * *

300 Q. Would the interest paid book properly contain any entries excepting those that you have indicated, namely for disbursements on account of interest or exchange?

A. Yes, it would contain those entries.

Q. Would it properly contain other entries than those specified?

A. Why, I hardly think so. If I had the book before me I could very soon tell.

Q. Could any other entries be made on that book than for interest paid for the bank, regularly and properly?

301-320 Objection overruled.

Each of the defendants separately except.

A. Why, I don't think any entry could be properly made only for an expenditure of the bank in some way, you know, either interest paid on deposits, or something like that.

Q. And would those entries be debit or credit entries?

A. They would be debit.

Q. Those would all be debit entries?

A. Yes, sir.

Q. Could a credit entry be properly made to this account on this book?

Each of the defendants objects as incompetent, immaterial, and irrelevant; calling for the conclusion of the witness, and not the best evidence.

Objection overruled.

Each of the defendants separately except.

A. They could not.

* * * * *

321-351 Q. Is it not a fact that at the time of this change in those figures that S. G. Owen, the bank examiner, came here to Lincoln, and was examining and investigating to ascertain the condition of the Marsh National Bank, and whether the stock taken had been fully and properly paid, and discovered that some stock taken by Mosher had been paid by turning over to the bank \$30,000 of stocks and bonds, and that Owen then objected to his paying for any stock in that way, and advised him to take it out and substitute some proper payment, as the Comptroller of the Currency, he thought, would not approve of the payment for the stock in that way, by stocks in another concern?

A. Well, I think that is true.

* * * * *

352 Deposition of LEONIDAS M. LAWSON as contained in former Bill of Exceptions in these cases, and found at Page 176 of Volume 1 thereof, read in evidence and objections and exceptions taken as herein noted:

Direct examination.

Read by Mr. NORVAL:

Q. State your name, age, occupation and place of residence.

A. Leonidas M. Lawson is my name; I am of lawful age; and I live in the Borough of Manhattan, City of New York, at No. 15 East 67th Street; I am not now engaged in active business, though I sometimes act as counsel in matters of law.

Q. You are the same Leonidas M. Lawson served with a subpoena in the matter of the taking of depositions of yourself and others in the case of the Jones National Bank of Seward, Nebraska, against Charles W. Mosher and others, now pending and undetermined in the District Court of the Fifth Judicial District of Nebraska in and for Seward County, are you?

A. I am.

Q. And are you here in obedience to that subpoena?

A. I came in obedience to that subpoena.

Mr. LAWSON: I have important engagements for the day, and would request that my testimony be taken at some other time, as it is now very inconvenient for me.

Mr. BURR: It is agreeable to the plaintiff that further taking of these depositions be adjourned until tomorrow, Wednesday, May 21st, at the same time and place.

(Adjournment noted.)

LEONIDAS M. LAWSON, again being produced as per adjournment noted, testifies as follows:

Q. What business were you engaged in during the year 1884; and prior thereto?

A. In the banking business.

353 Q. Where?

A. In the city of New York.

Q. And under what name or style?

A. The style of the firm was Donnell, Lawson & Simpson.

Q. Up to what period or date were you engaged in the banking business under the firm name and style of Donnell, Lawson & Simpson?

A. To May 14th, 1884.

Q. What connection, if any, did you have with the firm?

A. I was a partner in the firm.

Q. State whether or not you were one of the managing partners of the firm.

A. Yes, I had to do with the general business of the firm, its management.

Q. And how long previous to May 14th, 1884, were you thus engaged?

A. Ever since the establishment of the firm, which was, I think, in about 1870.

Q. What happened or took place on the 14th of May, 1884?

A. The firm was compelled to suspend payment.

Q. In suspending payment what was done?

A. We immediately notified our clients, our customers, all over the country that we had suspended payment, and requested them to indicate where we should place any funds that were in transit coming to us for them.

354 Q. That isn't exactly what I mean. Was a receiver appointed?

A. Oh, yes, the firm made an assignment, and the assignee was Robert H. Weems.

Q. Made an assignment for the benefit of creditors?

A. Yes.

Q. What was the general nature of the business of the firm of Donnell, Lawson & Simpson prior to May 14th, 1884?

A. We conducted a general banking business; we received deposits and paid on check or draft, and made discounts for our customers.

Q. You were, I might say, a bank?

A. Yes, a bank, a general bank, general banking business.

Q. Are you familiar, or were you familiar with the Marsh National Bank of Lincoln, Nebraska?

A. I know the bank; it was one of our correspondents, or one of our clients; kept an account with us.

Q. Kept an account with you when?

A. I don't know when the account began, but they were keeping an account at the time of our suspension.

Q. Can you state of your own recollection whether or not they had an account with your bank at the time of your suspension, May 14th, 1884?

355 A. I can so state, and I know it is a fact that they did have an account at the time we suspended on May 14th, 1884.

Q. Do you recall about how much money they had on deposit with you standing to their credit on May 14th, 1884?

A. I think it was over \$25,000, probably \$26,000.

Q. Do you know whether or not they had any security for that \$25,000 or \$26,000?

A. I don't know positively, but I am pretty sure they did not.

Q. To what class of creditors did they belong?

A. They were general creditors.

Q. Were they what you would call one of your general country accounts?

A. Yes.

Q. On the 14th of May, 1884, what happened so far as pertains to the possession and control of the business, property — assets of the firm of Donnell, Lawson & Simpson?

356 A. Soon after the suspension the assignment was made for the benefit of our creditors, I think within a day or two, and Robert H. Weems was the assignee, and all the property and assets of the firm were taken possession of by the assignee, and he proceeded to administer upon them according to the laws of the State of New York.

Q. And about how long was he in possession of the business and assets and property of the firm of Donnell, Lawson & Simpson?

A. He retained control, possession and management of the business until the 20th of February, 1885?

Q. And on or about the 20th of February, 1885, what did he then do, if you know?

A. The property was turned back into the possession of the firm of Donnell, Lawson & Simpson, up to about the 20th of February 1885, the date when the assignee reassigned and reconveyed to the firm, what did the members of that firm have to do with the business, property, assets and affairs of the old firm.

Mr. NORVAL: The latter part of that answer is undoubtedly a question.

A. The members of the firm had nothing to do with the possession or control or management of the property, and the most they did was to advise the assignee as to any business that might be proper for them to advise him about in the settlement of the estate, and the members of the firm were engaged in inducing the creditors to assent to a settlement which would result in their resumption of business.

357 Q. Are Mr. Donnell and Mr. Simpson now living?

A. No, they are both dead.

Q. About when did they die?

A. Mr. Donnell died, I think, in 1891, and Mr. Simpson I think in 1896.

Q. Who were the members of the firm of Donnell, Lawson & Simpson?

A. Robert W. Donnell, George E. Simpson and myself.

Q. Do you know what property the firm of Donnell, Lawson & Simpson had, or the individual members of that firm, which was not assigned to Weems as assignee?

A. I know none.

Q. Did they have any property, to your knowledge other than that which was assigned?

A. None.

Q. Or means of paying their indebtedness other than out of the assigned estate?

A. None whatever; all property of every kind, nature and description of the firm of Donnell, Lawson & Simpson and the individual members thereof was assigned in possession as such assignee; the firm and its members had no property whatsoever.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson or the individual members thereof, paid any of the general unsecured creditors of the firm during the month of May, 1884?

358 A. I know that they did not.

Q. Did they make any partial payments to the creditors?

A. They made payments to no creditors whatever.

Q. And is that true of the whole period of time during which Mr. Weems was in possession as assignee?

A. Yes, that is true; during the time that the assignee was in possession no payment whatever was made by any member of the firm to any creditor.

Q. Do you know whether or not during this period, Mr. Weems as assignee made any payments to any creditors of Donnell, Lawson & Simpson?

A. He made no payments to the creditors of Donnell, Lawson & Simpson except to clear off the secured debts, the debts that the firm owed for which collateral had been pledged.

Q. Can you state whether or not the Marsh National Bank of Lincoln, Nebraska, had any collateral as security to their indebtedness?

A. They did not.

Q. Do you know whether or not during the month of May, 1884, the firm of Donnell, Lawson & Simpson or any member thereof paid to the Marsh National Bank any sum of money whatever or gave to it any note of hand?

359 A. They did not; they paid no money to the Marsh National Bank and gave no obligation to it of any sort during that time.

Q. Can you tell me what Mr. Weems reassigned to the firm of Donnell, Lawson & Simpson on or about the 20th day of February, 1885?

A. When the assignee was discharged he reassigned to the firm of Donnell, Lawson & Simpson all of the property and assets which

he had received except what had been necessary to pay the expense of his administration as assignee and what had been necessary to pay off the secured loans.

Q. Are you or were you acquainted with or familiar with the Capital National Bank of Lincoln?

A. I know that that bank, the Capital National Bank, was the successor of the Marsh bank.

Q. And when did that succession take place?

A. About June or July, 1884.

Q. Upon resumption of business by the firm of Donnell, Lawson & Simpson, or prior thereto or afterwards, do you know whether or not that firm paid to the Marsh National Bank or the Capital National Bank any sum of money whatever on account of the claim of the Marsh National Bank against the firm of Donnell, Lawson & Simpson?

360 A. Yes, I know.

Q. Will you state whether they did or not?

A. No, they did not. About the time of the discharge of the assignee they executed notes due in one year and two years for the indebtedness to the general creditors.

Q. And what notes did they execute, if any, to the Marsh or Capital National Bank?

A. They executed notes to them just as to all other general creditors, one half of the amount of the indebtedness of Donnell, Lawson & Simpson to them represented in one note, due one year after the date, and the other half of the indebtedness represented by a note due two years after date.

Q. What other, further or different note or notes did the firm of Donnell, Lawson & Simpson execute to the Marsh or Capital National Bank?

A. None whatever.

Q. Do you know whether or not the note given to the Capital National Bank by the firm of Donnell, Lawson & Simpson for fifty per cent of the indebtedness of Donnell, Lawson & Simpson to the Capital National Bank due in one year from its date was ever paid?

A. I don't know.

Q. Do you know whether or not the second note was paid?

361 A. Yes, I know that was not paid.

Q. Do you know whether or not on the 14th day of October, 1884, the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank of Lincoln, Nebraska, their two notes as follows: One note for \$4,695.79 and the other for \$5,084.76?

A. They made no such notes, I know I personally made no such notes, and from my intimate knowledge and management of the affairs of the business at that time I know that the other members of the firm made no such notes.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank of Lincoln, Nebraska, on the 20th day of July, 1885, their note for

\$9,391.57, and again on the 24th of July, 1885, their note for \$9,391.56?

A. I know that I personally made no such notes; and from my intimate knowledge of the management of the affairs and business at that time I know that the other members of the firm made no such notes.

Q. Do you know whether or not the firm of Donnell, Lawson & Simpson made and delivered to the Capital National Bank of Lincoln, Nebraska, on the 13th day of August, 1885, their note for \$10,000., and on the same date their note for \$20,300?

A. I know that I personally made no such notes, and from
362 my intimate knowledge and management of the affairs and business at that time I know that the other members of the firm made no such notes.

Q. Do you know of your own knowledge whether or not anything was paid to the Capital National Bank for or on account of the notes which I have just enumerated to you?

A. I know that nothing was paid upon those notes, the firm gave no such notes.

Q. Do you know whether or not anyone was authorized by the firm to give such notes?

A. No one ever had authority to execute such notes.

Q. Do you know whether or not during the month of May, 1884, any money was paid by the firm of Donnell, Lawson & Simpson or the individual members thereof to the Chemical National Bank of New York for and on account of the indebtedness due from Donnell, Lawson & Simpson to the Marsh National Bank?

A. I know of no such payments having been made.

Q. And if they had been made you would know of it?

A. I would have known it, yes.

Q. Were any payments made to anyone or any firm or corporation for or on account of this indebtedness of about \$25,000
363 or \$28,000 due the Marsh National Bank during the month of May, 1884, after the suspension of Donnell, Lawson & Simpson?

A. No such payment was made.

Q. Have you in your possession or under your control the books of the old firm of Donnell, Lawson & Simpson?

A. I have not.

Q. Where are they?

A. The books were destroyed and sold for junk a year or two ago; they had been kept a long time and I had paid the storage upon them imagining that perhaps sometime they might be useful in evidence, but I kept them so long and there had been no demand for them that I concluded it was useless expense to continue their custody, and I had them destroyed.

Q. And these are the reasons why they were destroyed that you have just given?

A. Yes.

Q. What was your connection with the firm of Donnell, Law-

son & Simpson after its resumption of business on or about February 20, 1885?

A. I was a partner in the firm.

Q. And what were your duties as such; general?

A. To look after the general business of the concern. I had to do with the general management of the business.

Q. And you were conversant and familiar with all its affairs and business?

A. I was. I knew all of its transactions.

(Signed)

LEONIDAS M. LAWSON.

364 Deposition of WILLIAM AYRES, Jr., Read in evidence, as follows to wit:

By Mr. NORVAL:

Q. State your name, age, residence and occupation.

A. William Ayres, Jr., age, 37 years, residence 342 West 85th street, New York city; occupation banking.

Q. Of what institution are you now an employee?

A. Chemical National Bank of New York.

Q. And how long have you been in the service of the Chemical National Bank of New York?

A. Since October 4, 1880.

Q. And what is your official position now?

A. Clerk and assistant to the officers.

Q. And what are your particular duties?

A. With other capacities I have charge of the records.

Q. In the management of the affairs of the bank what comes under your immediate supervision?

A. Caring for the records, books of account, etc.

Q. Who has the immediate charge of all the records, both books of original entry, ledgers, correspondence, deposit slips, etc.?

A. I have.

Q. And how long have you had immediate charge of such records and books?

A. For twenty years.

Q. For twenty years last past?

A. Yes, 1882 to 1902.

Q. And during all that period have all the books, records and papers of the bank been in your custody and control?

A. Yes, sir.

Q. And who is charged with the responsibility of the safekeeping of these books and records.

365-375 A. I am.

Q. Are you or were you acquainted with the Marsh National Bank of Lincoln, Nebraska?

A. I was, with its account on our books.

Q. During what period?

A. In 1884 and for some time prior thereto.

Q. And were you acquainted with the Capital National Bank of Lincoln, Nebraska.

A. I was.

Q. During what period?

A. From the time of its organization.

Q. Down to when?

A. Its failure. I was acquainted with its account on our books.

Q. Did the Marsh National Bank of Lincoln, Nebraska, do business with the Chemical National Bank?

A. Yes, at that time,—1884.

Q. Up to about the last of May, 1884?

A. Yes, sir.

Q. Did the Capital National Bank of Lincoln, Nebraska, do business with the Chemical National Bank?

A. Yes, from about June 2, 1884, to the date of their failure; 1893 I believe.

Q. What was the nature of that business?

A. General Banking, receiving of remittances and charging to their account of all drafts, etc., drawn by them that were honored by us at that time.

Q. It was a general banking business—general banking account.

A. Yes.

Q. And you were, I might say, what is known as their New York correspondent?

A. Yes, sir.

* * * * *

376 Q. Assuming that the Marsh National Bank of Lincoln, Nebraska, charged the Chemical National Bank with \$10,000 on the 19th of May, 1884, with the memorandum against it "D. L. & S." have you been able to find a corresponding credit on the account of the Chemical National Bank by this process of elimination, which you have explained in your testimony?

377-380 A. I have not.

Q. From what you have been able to accomplish and learn in this elimination of the charges and credits kept between these two banks, are you able to state whether the Chemical National Bank ever received and gave credit to the Marsh National Bank against the Chemical National Bank on May 19th, 1884, with the memorandum marks against it, "D. L. & S."?

A. Apparently the item in question was never received and credited to the Marsh National Bank.

* * * * *

381-398 Q. And why is there not some identification mark before the item of \$10,000 under the head of the Marsh National Bank, dated May 19th and identified by "D. L. & S."?

Defendants object, severally, as incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. Because it was impossible for me to reconcile it with any

credit which appeared on the account of the Chemical National Bank.

* * * * *

399 Mr. NORVAL: Plaintiffs now offer in evidence the testimony of Augustus D. Lynch taken at the former trial hereof, and found in the Bill of Exceptions Volume No. 1 beginning on page 8. Evidence offered received and read as follows:

AUGUSTUS D. LYNCH called on behalf of the plaintiffs, and being first duly sworn testified as follows:

Direct examination:

Read by Mr. NORVAL:

Q. Where do you reside, Major?

A. Washington, D. C.

Q. How long have you resided there?

A. Near seventeen years.

Q. What official position, if any, do you hold in connection with the Comptroller of the Currency, and the Treasury department of the United States?

A. I am Chief, in the division of "Insolvent National Banks."

Q. And as such officer, are you familiar with the records of that office, and the manner of keeping them?

A. Yes, I am.

Q. You may state if you have with you, in your official capacity, any of the records pertaining to the office of the Comptroller of the Currency?

A. I have.

Q. Will you produce them?

(Witness complying, produces a bundle of papers.)

Q. You may state by what authority, or by whose directions, the documents which you have produced were brought from the department?

A. By authority of William B. Ridgeley, Comptroller of the Currency.

Q. And for what purpose and object?

400 Q. What was the occasion?

(Not answered.)

Q. When were they brought from Washington, and in whose custody have they been since that time?

A. I left there yesterday a week ago, and that have been in my custody ever since.

Q. And from whom did you receive them; and where did you receive them?

A. By direction of the Comptroller of the Currency I took them from the files of the office.

Q. And brought them here with you?

A. I did.

Q. And kept them in your possession until this time?

A. I have.

Q. And are they a part of the files and records in the office of the Comptroller of the Currency?

A. They are.

The following Exhibits identified: No's 942 to 948 both inclusive, and No's 958 to 971 both inclusive, and No.'s 972 to 976 both inclusive.

Q. I now hand you, Major Lynch, Exhibits 952-943 and 944 and ask you if they are a part of the files and records of the office of the Comptroller of the Currency at Washington?

A. They are. They were taken in this manner from the files, just as shown here.

Q. And brought by you from there, and have been since in your possession?

A. Yes, sir.

Q. I now hand you Exhibits 949 to 959 inclusive, and will ask you to state if they are a part of the files and records of the office of the Comptroller of the Currency at Washington, D. C.?

401 A. Yes, they are a part of the files of the Report Division.

Q. And they were brought by you from Washington and have been in your custody ever since as the custodian of papers for the treasury department?

A. They have been in my possession.

Q. And are still in your possession as such. I now hand you papers marked Exhibits No. 960 to 971 inclusive, and will ask you to state if they are a part of the records and files of the office of the Comptroller of the Currency at Washington, D. C.?

A. They form a part of the papers, they were in an envelope marked with a private mark.

Q. They are a part of the files, documents and records of the office of the Comptroller of the Currency?

A. Yes, sir. (Witness indicates private mark on envelope.)

Q. And they were brought by you from the department of the Comptroller of the Currency to this city last week, and in your custody?

A. They have.

Q. I now hand you Exhibit No. 972, and will ask you if that is a part of the records and files of the office of the Comptroller of the Currency at Washington, D. C.?

A. It is, yes sir.

Q. And the same is in your custody as stated in reference to the other papers?

A. Yes, sir.

Q. You may state, Major Lynch, if you know what has become,— or whether or not the proofs of publication of the statements that were made by the Capital National Bank prior to 1892 are in the Comptroller's office at Washington, or what has become of them.

A. They could not be found, and there is a rule of the office; of the bureau fixed by Col. Tren, when he was Comptroller
402 that after five years the published statements might be destroyed, on account of the space they took in the vaults, and he issued an order that they might be destroyed, and they are not in the files.

Q. And that has been the custom ever since?

A. Yes, sir.

Q. You have made diligent search through the files and they could not be found?

A. No, sir. That is the rule of the office. The Comptrollers regarded it as a departmental rule, but it was made by a Comptroller. There is an affidavit of the File Clerk, specially made, I don't know as it enters here, but he makes that verification.

By COUNSEL FOR DEFENDANTS:

Q. You say you made a search for the papers, or did you rely upon that rule that they were destroyed?

A. No the file clerk made an examination, who is charged with these publications. I also looked in the files.

Q. Did you make search for them?

A. Yes, sir.

Q. I will ask you whether you came here and brought these papers at the request of the plaintiff in this case?

A. The circumstances as I understand are these. Mr. Jones addressed a letter to the Comptroller of the Currency and requested certain papers to be sent here, or to him, in such manner as was proper, and the Comptroller upon his request sent them and designated me as his representative, the representative of the comptroller.

Q. You came here at their expense?

A. I did. The money was paid to the Comptroller. The office pays my expenses. They go into the Comptroller's hands and not mine.

Q. You spoke of Jones; is that the Jones of the Jones National Bank?

A. President of the Jones National Bank.

403 Q. Who sent you here to represent him?

A. The Comptroller of the Currency sent me here to present these papers to the court.

Q. As a representative of what department?

Defendants object, severally, as leading.

Objection Overruled.

Each of the defendants excepts.

A. I came as the chief of the Insolvent division, and known as the Currency bureau of the Treasury department.

Q. Is that connected with the Comptroller of the Currency?

A. The Comptroller is the Chief or head of the Currency bureau.

Q. Of the treasury department?

A. Of the treasury department.

Q. And you came as his representative?

A. I did.

Q. Representative of that department?

A. Yes, sir.

Witness excused.

Plaintiffs now offer in evidence Exhibit No. 942.

Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid for its introduction, and no proof of any notice having been brought to either of these defendants the writing of this letter.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 942 received in evidence.

Copy of Exhibit No. 942, is as follows:

"Office, Comptroller of Currency, Feb. 23, 1892.

LINCOLN, NEBR., Feb. 23, 1892.

E. S. Lacy, Washington, D. C.

DEAR SIR: Your letter of Feb. 15/92 received and considered. The manner of conducting the Capital Nat. Bank of Lincoln, Neb. for a length of time has not been *satisfactory* to me. I have had talk with C. W. Mosher and R. Outcalt, president and Cashier of the subject and they promise that the management of the bank shall be improved. I think I can promise you there will be better management. Your letter is a move in the right direction, it indicates that we the directors should take a more positive position in the management which I for one shall do.

Resp. &c.,

E. P. HAMER.
Exhibit 334.

Exhibit 942, O. P. H."

404 Mr. CUMMINS: I also offer in evidence Exhibit No. 943. The defendants and each of them object to the introduction of the exhibit for the reason that it is incompetent, irrelevant and immaterial, and no foundation laid for its introduction.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 943, (Being Exhibit x943 in this case) received and read in evidence, as follows:

No. 2988.

Office Comptroller of Currency, Oct. 14, 1892.

"C. W. Mosher, Pres't. H. J. Walsh, Vice Pres't.
R. C. Outcalt, Cashier.

Capital National Bank, Capital \$300,000.

To the Comptroller of the Currency, Washington, D. C.

DEAR SIR: In reply to your favor of Aug. 31-1892 would state that we fully answered you in Feb. last as regards the Mosher & Small loans, & am now making good progress towards cutting those items down to the limit.

As regards the Real Estate mortgages that is a part of the Small matter & both will be cleaned up at the same time. The dividend of July 1st was all right; the expenses since then have exceeded income by reason of having paid taxes, & interest on certificates of deposits to an unexpected amount during July. The item of \$8,000.00 losses referred to was an estimate of contingent losses & not any particular loss already incurred, but referred to some matters or process of liquidation, all items mentioned by you shall receive prompt attention.

Your truly,
(Signed)

C. W. MOSHER,
R. C. OUTCALT, *Cashier*,
D. E. THOMPSON,
E. P. HAMER,
A. P. T. SHEARL,
R. O. PHILLIPS,
C. E. YATES.

Exhibit 335.

Exhibit x943.

Exhibit 943, O. P. H.

405 Mr. NORVAL: Plaintiffs offer in evidence Exhibit No. 944.

Mr. BISHOP: The defendants each separately object to the introduction of the exhibit for the reason that it is incompetent, irrelevant and immaterial, and no foundation laid for its introduction.

Objection Overruled.

Each of the defendants except.

Exhibit No. 944 Received and Read in evidence.

Office Comptroller of Currency, Feb. 23, 1892.

LINCOLN, NEB., Feb. 19th, 1892.

To the Hon. Comptroller of the Currency.

DEAR SIR: Referring to your letter of 16th to Mr. C. W. Mosher, President, we would say in regard to the item 50950.28 E. W.

Mosher, that this am't appears on the books to be a loan to him endorsed by C. W. Mosher and secured collaterally by note of many individuals in smaller am'ts aggregating the same am't made to E. W. Mosher.

The facts are that this account is made up with small notes taken in a territory from which comes the best products of the state, and considered a good field for a line of loans & E. W. Mosher was authorized to get good paper of this character for the bank, and such notes being made in the name of E. W. Mosher.

The officers of the bank requiring a guaranty of his discretion took notes of E. W. Mosher, which have been endorsed by C. W. Mosher making the notes of smaller am'ts collateral, thus making fewer a/cs to handle, but unfortunately losing sight of the requirements of Sec. 5200 touching limits of am't which we may simply say ought not to have been done and the matter has now received the attention of the Directors through instructions to place the whole matter in technical as well as financially proper shape as quickly as it may be done without loss.

The J. W. Small, 51752.53. This was originally a note 405 given by the Fairfield Exchange Bank of Fairfield, Neb., for \$20,250.00 at the time secured by collateral notes. In course of time the loan was found to be weak and Pres't Mosher took additional security in shape of second mortgages on real estate, a lot of live stock &c. Mr. Small's bank and his own affairs fell into hard lines and failed in both respects.

The officers of the bank meanwhile had paid off first mortgages in the real estate to the amount of some \$31,000 to make better the bank security. Other creditors of Small attacked the position of the bank as holding excessive security which resulted in litigation still unsettled, but through which the claims of this bank against some 2,700 acres of land has been declared a first lien. And it seems certain that the claim will be fully realized, or at farthest only a small loss can follow. The excessive am't of the a/c comes of erroneously charging the am'ts paid for raising liens on the real estate in same a/c instead of a special a/c therefor.

In regard to overdrafts. Since the examination this matter has had close attention and has been reduced to \$13,537.84 at this date, and should never have been permitted inasmuch as the records of the bank will show specific instruction to the officers by resolution of the directors not to allow overdrafts.

Overdue paper. Instructions have been made to the officers to give both close attention and continuous efforts to correct this condition. It will be remembered however that the J. W. Small a/c constitutes a part of this am't which will hold a considerable sum in that condition until pending litigation is concluded.

Discount committee. The bank has always had a discount committee but about a year since Mr. W. W. Holmes died suddenly & left only one member. The place has now been supplied by 407 the appointment of Mr. E. P. Hamer. The Com. now being A. P. S. Stewart & E. P. Hamer.

Rediscounts. These have been cut down since examination from

137,234.16 to 50,844.14 and will probably be reduced considerably the coming three months. This condition was not taken on for purpose of increased business but to meet falling off in deposits from which all western banks suffered on account of the drouth of 1890.

It is the desire of the directors that the standing of this bank should in all respects be upon perfect footing in the Department and will at all times be pleased to have notification of any apparent neglect.

Yours Resp'y,

C. W. MOSHER, *Pt.*
C. E. YATES, *Director.*
R. O. PHILLIPS, *Director.*
D. E. THOMPSON, *Director.*
A. P. S. STEWART, *Director.*
E. P. HAMER, *Director.*
R. C. OUTCALT, *Director.*

Exhibit x944.

Exhibit 333.

Exhibit 944 O. P. H.

(Said Exhibit being endorsed as follows:) File No. —. C. No. 2988. From Capital Nat'l Bank, Lincoln, Nebr. Date, Feb'y, 1900, 1892. Subject—Explaining loans, &c. Answered, —. Answered by, —. — Division.

Plaintiffs now offer in evidence Exhibit No. 960.

Mr. Bishop: Each of the defendants separately object to the introduction of this exhibit the same being incompetent, irrelevant and immaterial, and no foundation laid for its introduction, and no proof of any notice having ever been brought to either of these defendants of the writing of this letter.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 960 received and read in evidence, (being identical with Ex. x960).

408

Ex. 960.

"Office of Comptroller of Currency.

Organization.—Form 3.—Ed. 7 5 98 4,500.

Oath of Directors.

STATE OF NEBRASKA,

County of Lancaster, ss:

We, the undersigned Directors of "The Capital National Bank of Lincoln in the state of Nebraska being citizens of the United States, and residents of the state of Nebraska do each for himself and not one for the other, solemnly swear that we will severally, so far as the duty devolves on us diligently and honestly administer

the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said Association has been organized; and each for himself does solemnly swear that he is the owner in good faith, and in his own right of the number of shares of stock required by said Statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Name.	Residence and post-office address.
1 C. W. Mosher.....	Lincoln, Nebraska
2 R. C. Outcalt.....	"
3 E. P. Hamer.....	"
4 R. O. Phillips.....	"
5 A. P. S. Stuart.....	"
6 D. E. Thompson.....	"
7 C. E. Yates.....	"

On this 8 day of February A. D. 1892 before me a Notary Public in and for the state and county afore-said appeared C. W. Mosher, R. C. Outcalt, E. P. Hamer, R. O. Phillips, A. P. S. Stuart, D. E. Thompson and C. E. Yates, who are personally well known to me, and took the foregoing oath and each subscribed the same in my presence.

[SEAL.]

HAL C. LONG,
Notary Public

NOTE.—Each director when elected must take the oath of office and under section 5147 E. S. R. S., it should be transmitted to the Comptroller of the Currency immediately after the election, etc. Ex. 960. O. P. H."

(Endorsed on back is the following:) "2988.—Oath of Directors of Capital National Bank of Lincoln Nebraska. 1892.

409-418 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 931.

Mr. BISHOP: Each of the defendants separately object to the same as incompetent, irrelevant and immaterial; no foundation laid; no proof of any notice having ever been brought to either of the defendants of the writing of this letter.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 931, received and read in evidence, (being identical with Ex. 931.)

* * * * *

Ex. 931.

"Office of Comptroller of Currency.

Organization.—Form 3.—Ed. 75 98 4,500.

Oath of Directors.

STATE OF NEB.,

County of Lancaster, ss:

We, the undersigned Directors of "The Capital National Bank" of Lincoln in the state of Nebraska, being citizens of the United States, and residents of the State of Nebr. do each for himself and not one for the other solemnly swear that we will severally, so far as the duty devolves upon us, diligently and honestly administer the affairs of said Association; and that we will not knowingly violate, or willingly permit to be violated, any of the provisions of the Statutes of the United States under which said association has been organized; and each for himself does solemnly swear that he is the owner in good faith, and in his own right, of the number of shares of stock required by said statutes, subscribed by him or standing in his name on the books of the said Association; and that the same is not hypothecated, or in any way pledged as security for any loan or debt.

Name.	Residence and post-office address.
1. C. W. Mosher.....	Lincoln
2. A. P. S. Stuart.....	"
3. W. W. Holmes.....	"
4. D. E. Thompson.....	"
5. R. O. Phillips.....	"
6. C. E. Yates.....	"
7. E. P. Hamer.....	"

On this 4 day of March A. D. 1891 before me a Notary Public in and for the state and county aforesaid, appeared C. W. Mosher, A. P. S. Stuart, W. W. Holmes, D. E. Thompson, R. O. Phillips, C. E. Yates, and E. P. Hamer who are personally well known to me, and took the foregoing oath, and each subscribed the same in my presence.

[SEAL.]

J. W. MAXWELL,
Notary Public.

NOTE.—Each Director when elected must take the oath of office and under section 5147 U. S. R. S., it should be transmitted to the Comptroller of the Currency immediately after the election, etc.

Ex. No. 961—O. P. H.

(The following endorsement appears on the back thereof:) No. 2988 oath of Directors of The Capital N. B. of Lincoln, Neb. 1891.

419-431 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 972.

Mr. BISHOP: Each of the defendants objects to the introduction of this exhibit for the reason that the same is incompetent, irrelevant and immaterial and no foundation has been laid for its introduction.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 972 received and read in evidence. (Identical with Ex. No. x-972 hereof.)

EXHIBIT X972.

Enter Charter Number of Bank Here. No. —.

Bank Officers are requested to use the following form for printers' "copy."

Report of the Condition of The Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, 9th Dec., 1892.

Resources.

	Dollars.
Loans and Discounts.....	768,601.44
Overdrafts, secured and unsecured.....	6,217.74
U. S. Bonds to secure circulation.....	50,000.00
U. S. Bonds to secure U. S. Deposits.....	14,286.28
Current expenses and taxes paid.....	325.00
Premiums on U. S. Bonds.....	5,770.00
Stocks, securities, etc.....	38,617.92
Banking house, furniture and fixtures.....	17,800.33
Other real estate and mortgages owned.....	5,394.72
Due from National Banks (not reserve agents).....	107,090.01
Due from State Banks and Bankers.....	.....
Due from approved reserve agents.....	3,698.56
Internal-Revenue Stamps.....	8,841.16
Checks and other cash items.....	2,355.00
Exchanges for clearing house.....	298.71
Bills of other Banks.....	.....
Fractional paper currency, nickels, and cents.....	.....

Lawful money reserve in bank, viz:

Specie.....	26,789.50
Legal-tender notes.....	17,431.00
Redemption fund with U. S. Treasurer (5% of circulation).....	1,350.00
Due from U. S. Treasurer, other than 5% redemption fund.....	.....
Total.....	1,074,867.37
Total.....	.....

Liabilities.

	Dollars.
Capital stock paid in.....	300,000.00
Surplus fund	6,000.00
Undivided profits, less expenses and taxes paid.....	21,180.75
National Bank notes outstanding.....	45,000.00
State Bank notes outstanding.....	.....
Due to other National Banks.....	81,574.14
Due to State Banks and Bankers.....	47,372.89
Due to Trust Companies and Savings Banks.....	.....
Due to approved reserve agents.....	.....
Dividends unpaid .....	.....
Individual deposits subject to check....	356,139.33
Demand certificates of deposit.....	158,545.88
	<hr/>
Time certificates of deposit.....	643,632.24
Certified checks .....	.....
Cashier's checks outstanding.....	.....
United States deposits.....	.....
Deposits of U. S. disbursing officers.....	.....
Notes and bills rediscounted.....	59,054.38
Bills payable, including certificates of deposit for money borrowed.....	.....
Liabilities other than those above stated.....	.....
	<hr/>
Total.....	1,074,867.37

STATE OF NEB.,

County of Lancaster, ss:

I, R. C. Outcalt, Cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15 day of Dec., 1892.

HAL. C. YOUNG,
Notary Public.

Correct—Attest:

C. W. MOSHER,

C. E. YATES,

R. O. PHILLIPS,

Directors.

Blank items need not be published.

NOTE.—The banks are respectfully notified that by law their published reports must be copies of the originals; and they must therefore state separately the amount of deposits subject to check, of demand and time certificates of deposit, and of certified checks and cashier's checks outstanding. Certificates of Deposit representing

money borrowed must be included in and published as Bills Payable. Failure to do this may subject a bank to the expense of republication.

Ex. 972.

O. P. H.

Ex. A972.

M. D. CAREY,
Notary Public.

Ex. A972.

M. D. CAREY,
Notary Public.

Treasury Department. Office of Comptroller of the Currency.

Form 200 (12-6-1901-50,000).

Publisher's Certificate.

(Enter Charter Number of Bank Here) No. 2988.

Please Observe the Following Requirements:

Cut the printed Report from the newspaper and attach here.

I. Each National Bank report must be published in a newspaper in the place where the bank is established; or if there be no newspaper in the place, then in the one published nearest thereto in the same county.

II. It must be published in the same form, and the same order of items as in the sample form on the back of this certificate, including the full title and location of bank, the affidavit of cashier, the notary's certificate, and the attestation of at least three directors.

III. Items which remain blank in the original may be omitted from the printed report, but the publication must never be condensed by combining two or more items into one.

IV. The original report should not be delayed on account of publication, but should be forwarded at the earliest moment possible, and the published report can follow at a later date. The form herewith can be used to furnish "copy" for the printer.

(See sections 5211 and 5213 U. S. R. S.)

Paste so that no part can be torn away.

See Sample Form on the back of this Certificate.

STATE OF NEBRASKA,

County of Lancaster, ss:

On this 17th day of December, A. D. 1892, personally appeared before the undersigned, a Notary Public within and for said county

and State, ———, publisher of the Nebraska State Journal, a daily newspaper published at Lincoln, County of Lancaster, State of Neb., who, being duly sworn, states on oath that the Report of "The Capital National Bank" of Lincoln, in the State of Neb., a true copy of which is hereto annexed, was published in said newspaper in its issue of the 17th day of Dec., A. D. 1892.

H. D. HATHAWAY, *Publisher.*

Subscribed and sworn to before me this 17th day of December, 1892.

W. A. WILLIAMS,
Notary Public.

Forward Certificate to Comptroller of Currency as promptly as possible.

2-2353.

432 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 975.

Mr. BISHOP: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 975 received and read in evidence. (Identical with Ex. No. x-975 hereof.)

Ex. X-975.

Treasury Department.
Office of the Comptroller of the Currency.

WASHINGTON, May 14th, 1884.

Whereas, the Congress of the United States by an Act approved May 3, 1884, did authorize the "Marsh National Bank of Lincoln" located in the city of Lincoln, County of Lancaster and state of Nebraska, to change its name to "The Capital National Bank of Lincoln" whenever the board of directors of The Marsh National Bank of Lincoln, shall accept the new name by resolution of the said board, and cause a copy of said resolution, duly authenticated, to be filed with the Comptroller of the Currency:

And whereas, the board of directors of "the Marsh National Bank of Lincoln" at a meeting called for the purpose on May 6, 1884, did vote to accept the change of name to "The Capital National Bank of Lincoln."

433 & 434 And whereas, the President, in accordance with section 1 of said act has executed a certificate under the corporate seal of the bank specifying the action taken by the directors of said bank as above, and their determination as to such change of name, and has caused the same to be recorded in the office of the Comptroller of the Currency.

Now therefore, I, Henry W. Cannon, Comptroller of the Currency do hereby declare that by virtue of said act the name of "The Marsh National Bank of Lincoln" is changed to "The Capital National Bank of Lincoln."

In testimony whereof, I have hereto subscribed my name and caused my seal of office to be affixed to these presents at the City of Washington, in the District of Columbia, this 14th day of May A. D. 1884.

[Seal of the Comptroller of the Currency.]

H. W. CANNON,
Comptroller of the Currency.

Certificate for Certified Copy.

TREASURY DEPARTMENT,
Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Lawrence O. Murray, Deputy and Acting Comptroller of the Currency do hereby certify that the paper hereto attached is a true and complete copy of the original certificate of the Comptroller of the Currency, under date of May 14, 1884 approving change in name of the Marsh National Bank of Lincoln, Nebraska, to The Capital National Bank of Lincoln, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this twenty-fifth day of February A. D. 1899.

[Seal of Comptroller of Currency.]

LAWRENCE O. MURRAY,
Deputy and Acting Comptroller of the Currency.

Ex. 975.

P. 2.

X-975.

* * * * *

435 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 945.

Mr. BISHOP: Each of the defendants objects to its introduction for the reason it is incompetent, irrelevant and immaterial; no foundation has been laid for its introduction, and no notice of such a letter brought to the knowledge of these defendants or to the plaintiffs in this action.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 945 received and read in evidence. (Identical with Ex. No. X-945 hereof.)

S. 2988.

Treasury Department. Office of Comptroller of the Currency.

WASHINGTON, D. C., Sept. 8, 1891.

M. L. C.

E. A. D.

Mr. C. W. Mosher, President Capital National Bank, Lincoln, Neb.

SIR: The report of an examination of your bank, made on the 19th ultimo, has been received.

The following loans appear to exceed the limit prescribed by Section 5200 U. S. R. S.:

E. W. Mosher	\$46,355.98
G. W. Small	56,478.20

It appears from the report that your bank holds real estate mortgages to secure the latter loan, which were acquired May 30, 1886.

Your attention is respectfully called to Section 5137 U. S. R. S. which provides that

"No such association shall hold the possession of any real estate under mortgage, or the title and possession of any real estate purchased to secure any debts due to it, for a longer period than five years."

The examiner reports that when your last report of condition was made to this office, you had overdrafts amounting to \$55,004.47 as shown by your books, while you only reported \$12,418.97, and classed the remainder as loans and discounts.

Ex. 945.

P. 1.

Exhibit X-945.

436 You are respectfully informed that your reports and published statements should show the full amount of this item as it appears on the books of your bank.

The practice of allowing overdrafts should be avoided so far as practicable. Demand notes should be taken in all cases for temporary loans.

Overdue paper is reported amounting to \$103,760.25 of which \$14,000. is classed as "bad debts" as defined by Section 5204 U. S. R. S. Such of the overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension. The "bad debts" unless satisfactorily arranged in the meantime, should be charged off prior to declaring a dividend.

Your premium account should be charged off, as the 4½% U. S. bonds have no premium value in the market.

The examiner reports that you expect to sustain a loss of \$2,000. upon the note of Donnell, Lawson and Simpson and \$2,500. upon your suspended and overdue paper, which together with the \$14,-

000.00 "bad debts" you intend to charge off before declaring a dividend.

It is noted that your current expenses exceed your undivided profits by \$4,830.87.

It appears from the report that your bank has a large liability on account of notes and bills rediscounted, which the examiner states has been occasioned by the falling off in your deposits. It is respectfully suggested that some of your loans be called in as soon as practicable.

The examiner reports that your board of directors has held only two meetings during the past year, and there is no record of their having examined or approved of the loans and discounts.

It is respectfully suggested that the conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable.

Respectfully yours,

R. M. NIXON,

Deputy and Acting Comptroller.

Certificate for Certified Copy.

TREASURY DEPARTMENT,

Office of the Comptroller of the Currency, 88:

Under the provisions of Section 884 of the Revised Statutes of the United States, I, William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Nixon, Deputy and Acting Comptroller of the Currency September 8, 1891 to C. W. Mosher, President of "The Capital National Bank of Lincoln," Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,

Comptroller of the Currency.

Ex. 945, P. 2.
Exhibit X-945.

437 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 946.

Mr. BISHOP: Each of the defendants objects to its introduction, as incompetent, irrelevant and immaterial; no foundation laid for its introduction, and for the further reason that there is no proof of any notice of such a letter having been brought to the knowledge of these defendants, or to the knowledge of the plaintiffs in these actions.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 946 received and read in evidence. (Identical with Ex. X-946 hereof.

(See copy on next succeeding page.)

438

L. 2988.

Treasury Department.

Office of Comptroller of the Currency.

WASHINGTON, D. C., Jan. 30, 1892.

C. S. H.

Mr. R. C. Outcalt, Cashier, Capital Nat. Bank, Lincoln, Neb.

SIR: The report of condition of your bank on Dec. 2, 1891 is received, in which no entries appear in the following schedules on the back of the report: Bad debts, as defined in Sec. 5204, in Loans and Discounts.

Please inform me by return mail what amounts, if any, should be entered in these schedules.

You are respectfully requested in future to fill out all schedules on the back of the report, writing in the word "none" where there are no items to be entered.

A careful compliance with this request will save correspondence.

Respectfully yours,

R. M. NIXON,

Deputy Comptroller.

Certificate for Certified Copy.

TREASURY DEPARTMENT,

Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I, William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Nixon, Deputy Comptroller of the Currency, January 30, 1892 to R. C. Outcalt Cashier of "The Capital National Bank of Lincoln" Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,

Comptroller of the Currency.

Ex. 964.

Exhibit X-964.

439 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 947.

Mr. BISHOP: Each of the defendants objects to its introduction for the reason it is incompetent, irrelevant and immaterial; no foundation has been laid for its introduction, and for the further reason that there is no proof of any notice of such a letter having been brought to the knowledge of the defendants we (Mr. Rose and myself) represent, or to the knowledge of the plaintiffs in these actions.

Objection overruled.

Defendants each separately except.

Exhibit No. 947 received and read in evidence. (Identical with Ex. No. X-947 hereof.)

(See copy on next succeeding page.)

440

L. 2988.

Treasury Department.

Office of Comptroller of the Currency.

WASHINGTON, D. C., Feb. 5, 1892.

H.

Mr. C. W. Mosher, President, Capital Nat. Bank, Lincoln, Neb.

SIR: In the report of condition of your bank on Dec. 2 1891 there is included in the schedule of loans and discount \$14,000 bad debts as defined by Section 5204 of the Revised statutes.

You are respectfully requested to advise me of the present condition of this paper.

Respectfully yours,

R. M. NIXON,
Deputy Comptroller.

Ex. 3b.

"DEAR SIR: Above notes have been charged off since last statement.

Yours resp'y,

C. W. MOSHER, *Pl.*"

Certificate for Certified Copy.

TREASURY DEPARTMENT.

Office of the Comptroller of the Currency, ss:

Under the provisions of Section 884 of the Revised Statutes of the United States, I, William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of R. M. Dixon, Deputy Comptroller of the Currency, February 5, 1892 to C. W. Mosher President of "The Capital National Bank of Lincoln" Nebraska, and of the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 947.

Exhibits X-947 and "3b."

441 Mr. NORVAL: Plaintiffs now offer in evidence Exhibit No. 948.

Mr. BISHOP: Each of the defendants objects to the introduction of this exhibit for the reason that it is incompetent, irrelevant and immaterial; no foundation laid for its introduction, and for the further reason that there is no proof that any notice of such a letter was ever brought to the knowledge of these defendants, of to the plaintiffs in these cases.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 948 received and read in evidence. (Identical with Ex. No. X-948 herein.)

(Copy at next page.)

442 S. 2988.

Treasury Department.

Office of
Comptroller of the Currency.

M. L. C.

E. A. D.

G. M. C.

WASHINGTON, D. C., Feb. 16, 1892.

Mr. C. W. Mosher, President Capital Nat'l Bank, Lincoln, Neb.

Sir: The report of an examination of your bank, made on the 26th ultimo, has been received.

The following loans appear to exceed the limit prescribed by Section 5200 U. S. R. S:

E. W. Mosher.....	\$50,950.28
G. W. Small.....	51,752.53

The examiner reports that you have some loans that have been carried along for a number of years, which he thinks should be collected as soon as practicable, and includes the above excessive loans in this class. He also thinks that Mr. Mosher's liability as an endorser is too large.

The agreement of Messrs R. C. Outcalt and C. W. Mosher to reduce their liabilities, and in future adjust all accounts so that overdrafts will be confined to those of a temporary nature, and also that they will close the bulk of their outside interests, and give their attention to the affairs of the bank, is received.

The examiner states that owing to these outside dealings the business of the bank has suffered.

Overdrafts are reported amounting to \$60,936.78. Please inform me to what extent these have been reduced since the examination. The practice of allowing overdrafts should be avoided so far as practicable.

Overdue paper is reported amounting to \$104,868.19 of which \$14,500 is classed as "bad debts" as defined by Section 5204 U. S. R. S. Such of this overdue paper as is good should be collected or made active by renewal, with satisfactory security for payment after a reasonable extension.

The examiner reports that losses aggregating \$30,000, including the amount of "bad debts" reported above, were charged off during the examination.

The examiner reports that your by-laws require the board of directors to meet only twice a year, and that they often only go through the form of declaring a dividend, and do not examine the loans and discount. He states that you have no discount nor examining committee.

It is respectfully suggested that the conduct of the affairs of a national bank is by law devolved upon the board of directors, and regular and frequent meetings are therefore very desirable.

Ex. 948, P. 1.
Exhibit X-948.

443 It appears from the report that your bank was borrowing \$137,234.16 on notes and bills rediscounted, and that it has been borrowing money continually during the past year.

The examiner states that the amount of your borrowings have been largely reduced since his previous examination, and it is suggested that all this liability be paid off, and that the implied power to borrow money should be reserved for emergencies, and not habitually used for the purpose of procuring banking capital.

The necessity for borrowing appears to have arisen from the excessive loans made, and your first effort should therefore be to realize on these by reducing them to the lawful limit. Special effort should also be made to collect or renew your overdue paper.

Please bring this communication to the attention of your board of directors for consideration, and for reply over their individual signature.

Respectfully yours,

E. S. LACY,
Comptroller.

C. Ex. 944.

Certificate for Certified Copy.

TREASURY DEPARTMENT,

Office of the Comptroller of the Currency, 887

Under the provisions of Section 884 of the Revised Statutes of the United States, I, William B. Ridgely Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original letter of E. S. Lacy, Comptroller of the Currency, February 16, 1892 to C. W. Mosher President of "The Capital National Bank of Lincoln," Nebraska, and the whole of such original on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name, and caused my seal of office to be affixed to these presents, at the Treasury Department, in the City of Washington, and District of Columbia, this twenty-ninth day of January A. D. 1902.

[Seal of the Comptroller of Currency.]

WM. B. RIDGELY,
Comptroller of the Currency.

Ex. 948, P. 2.

Exhibit X-948.

444 Mr. NORVAL: Plaintiffs now offer the testimony, from the Bill of Exceptions of the former trial of L. H. MORSE:

Direct examination.

Read by Mr. NORVAL:

Q. Where do you reside?

A. Lincoln, Lancaster county, Nebraska.

Q. And what is your business?

A. Newspaper business.

Q. Connected with what paper?

A. State Journal Company, at the present time.

Q. Have you been connected with any other newspaper in Lincoln?

A. From 1888 until 1894 I was connected with the Call Publishing Company, publishers of the Evening Call.

Q. That was a paper published in Lincoln?

A. Yes, sir.

Q. And in general circulation throughout the state?

A. Yes, sir.

Q. And from your connection with the State Journal can you state what the character of that paper is?

A. As to its circulation?

Q. Yes, sir.

A. It has a general circulation all over the state.

Q. Including Seward county?

A. Yes, sir.

Q. You may state, if you have knowledge, as to whether or not it

was the practice of the Call Publishing Company, while it published the Lincoln Call to keep files of its papers?

Defendants objects, severally, as immaterial.

Q. Did they keep a copy of the paper on file?

445 A. They did, yes sir.

Q. You may state if the State Journal has during your knowledge of its existence kept files of its daily papers?

A. Yes, sir.

Q. How long have you had knowledge of the existence of the Nebraska State Journal?

A. Oh, ever since I can remember.

Q. How long has that been?

A. Well, I would hate to say,—about '76 or '77,—along there some place.

Q. You may turn to the State Journal of 1886, and produce if you can the files of the State Journal for the month of January, 1886. You may state, Mr. Morse, if you have the files of the State Journal, showing a copy of the issue of the State Journal bearing date January 9th, 1887?

A. Yes, sir.

Q. Is that a copy of the State Journal issued on that date, (referring to paper in hands of witness) and of the regular edition of the Journal?

A. Yes, sir. Now then, I only act as custodian of these files here and it is understood at the office that I am to bring them back with me, and you can just have these marked, and then you may take copies of them.

Mr. NORVAL: Plaintiffs now offer in evidence the issue of January 9th, 1887, or so much thereof as relates to the notice and statement of the condition of the Capital National Bank.

446 Defendants object, severally, to the introduction of the paper offered as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants except.

Notice published in the State Journal under date of Jan. 9th, 1887, received and read in evidence,—being Exhibit 977—(Exhibit X-977 hereof).

“Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 28, 1886.

Resources.

Loans and discounts	\$737,426.12
Overdrafts	3,974.33
U. S. Bonds to secure circulation	50,000.00
Other stocks, bonds and mortgages	22,739.34
Due from approved and reserve agents	74,068.63
Due from other National Banks	56,215.29

Due from State banks and bankers	10,495.36
Real estate, furniture and fixtures	7,177.33
Current expenses and taxes paid	8,885.65
Premiums paid	7,188.43
Checks and other cash items	13,742.02
Bills of other banks	3,712.00
Fractional paper currency, nickels and cents	216.42
Specie	27,308.00
Legal tender notes	10,400.00
Redemption with U. S. Treasurer, (5% circulation)	1,900.00
Total	\$1,035,448.92

Liabilities.

Capital Stock paid in	\$300,000.00
Surplus funds	12,000.00
Undivided profits	28,439.38
National bank notes outstanding	45,000.00
Individual deposits subj. to checks ...	\$414,962.35
Demand certificates of deposit	40,869.66
Due to other National Banks	107,648.27
Due to state banks and bankers	37,448.66
Notes and bills rediscounted	597,918.94
Total	\$1,035,448.92

STATE OF NEBRASKA,
Lancaster County, ss:

I, C. W. Mosher, president of the above bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. W. MOSHER, *President.*

Subscribed in my presence and sworn to before me this 11th day of October, 1886.

E. R. SMITH, *N. P.*

Correct. Attest:

C. W. MOSHER,

C. E. YATES,

D. E. THOMPSON,

Directors.

Exhibit X-977.

* * * * *

447 Mr. NORVAL: We offer in evidence the notice published on that date and ask to have it marked Exhibit No. 978. Each of the defendants object as incompetent, irrelevant and immaterial under the issues, and not the best evidence. Objection overruled.

Each of the defendants except.

Exhibit No. 978 received and read in evidence, being Identical with Exhibit No. X-978 hereof:

Daily Nebraska State Journal, Lincoln, Saturday, August
448 6th, 1887.)

*Report of the Condition of the Capital National Bank, at Lincoln,
in the State of Nebraska, at the Close of Business, August 1, 1887.*

Resources.

Loans and discounts	\$908,623.31
Overdrafts	6,231.69
U. S. Bonds to secure circulation	50,000.00
Other Stocks, Bonds, Mortgages	15,231.
Due from approved reserve agents	75,139.86
Due from other National Banks	42,048.82
Due from State banks and bankers	5,624.17
Real estate, furniture and fixtures	5,650.00
Current expenses paid and taxes paid	2,192.88
Premiums paid	6,200.00
Checks and other cash items	45,349.70
Bills of other banks	1,570.00
Fractional Currency, nickels and cents	91.28
Specie	34,975.50
Legal tender notes	16,108.00
Redemption fund with U. S. Treasurer (5% of circulation)	2,250.00
Total	\$1,217,386.21

Liabilities.

Capital Stock paid in	300,000.00
Surplus fund	16,000.00
Undivided profits	3,447.66
National Bank notes outstanding	45,000.00
Individual deposits subject to check ...	\$454,253.97
Demand certificates of deposits	119,864.68
Due to other National banks	201,760.43
Due to state banks and bankers	77,059.47
Total	\$1,217,386.21

STATE OF NEBRASKA,

Lancaster County, ss:

I, R. C. Outcalt, Cashier of the above named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 5th day of August, 1887.

[SEAL.]

J. W. MAXWELL, N. P.

Correct. Attest:

W. W. HOLMES,
D. E. THOMPSON,
C. W. MOSHER,

Directors.

Exhibit X-978.

* * * * *
449 Mr. NORVAL: We now offer in evidence the notice or report of the condition of the Capital National Bank, at Lincoln, Nebraska at close of business October 5th, 1887, and ask that the same be marked Exhibit No. 979.

The defendants severally object to the introduction of Exhibit No. 979, as no sufficient foundation laid; no allegation in the Petitions that any such report was ever made or published, and as incompetent, irrelevant and immaterial.

Objection overruled.

Exhibit No. 979 received and read in evidence as follows (Identical with Exhibit No. X-979 hereof:)

50 & 451 (Daily Nebraska State Journal, Lincoln, Tuesday, October 11th, 1887.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, October 5, 1887.

Resources.

loans and discounts	
drafts	\$832,190.33
U. S. Bonds to secure circulation	2,590.53
other stocks, bonds and mortgages	50,000.00
due from approved Reserve agents	16,129.56
due from other national banks	74,162.21
due from state banks and bankers	36,377.13
real estate, furniture and fixtures	14,543.96
rent expenses and taxes paid	7,100.00
premiums paid	5,753.47
checks and other cash items	5,500.00
due from other banks	57,217.35
fractional paper currency, nickels and cents	635.
due from tender notes	37.70
redemption funds with U. S. Treas., (5% circulation)	37,855.50
	8,823.00
	2,250.00
Total	1,151,214.74

Liabilities.

Capital stock paid in	\$300,000.00
Surplus fund	16,000.00
Undivided profits	9,862.78
National bank notes outstanding	45,000.00
Individual deposits subj. to check	\$430,220.61
Demand certificates of deposit	119,453.43
Cashier's checks outstanding	4,159.04
Due to other National banks	145,106.92
Due to state banks and bankers	57,411.96
Notes and bills rediscounted	24,000.00
	<hr/>
	756,351.96
Total	<hr/>
	\$1,151,214.74

STATE OF NEBRASKA,
Lancaster County, ss:

I, R. C. Outcalt, Cashier of the above named bank, do solemnly swear that the above named statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 10th day of October, 1887.

E. R. SMITH,
Notary Public.

Correct. Attest:
C. W. MOSHER,
W. W. HOLMES,
A. P. S. STUART,
Directors.

Exhibit X-979.

452 *Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 9, 1892.*

Resources.

Loans and discounts	\$768,601.44
Overdrafts secured and unsecured	6,217.74
United States bonds to secure circulation 50,000	50,000.00
Stocks, securities, etc.	325.00
Due from approved Reserve agents	107,090.01
Due from other National Banks	17,800.33
Due from State banks and bankers	5,394.72
Banking house furniture and fixtures	5,770.00
Other real estate and mortgages owned	38,617.92
Current expenses and taxes paid	14,286.28
Checks and other cash items	3,698.56

Exchanges for clearing house.....	8,841.16
Bills of other banks.....	2,355.00
Fractional paper currency, nickels and cents.....	298.71
Specie	26,789.50
Legal tender notes.....	17,431.00
Redemption fund with U. S. Tr. (5% circulation) ..	1,350.00
Total	<u>\$1,074,867.37</u>

Liabilities.

Capital stock paid in.....	\$300,000.00
Surplus fund.....	6,000.00
Undivided profits.....	21,180.75
National Bank notes outstanding.....	45,000.00
Individual deposits subject to check... 356,139.33	
Demand certificates of deposit..... 158,545.88	
Due to other National Banks..... 81,574.14	
Due to state banks and bankers..... 47,372.89	
Notes and Bills rediscounted.....	<u>643,632.24</u>
Total	<u>59,054.38</u>
	<u>\$1,074,867.37</u>

STATE OF NEBRASKA,
Lancaster County, ss:

I, R. C. Outcalt, Cashier of the above named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December 1892.

HAL C. YOUNG,
Notary Public.

Correct. Attest:

C. W. MOSHER,
C. E. YATES,
R. O. PHILLIPS,
Directors.

Exhibit X-980.

453 & 454 Q. You may state if you find the Ad of the Capital National Bank in the issue of that paper, the Nebraska State Journal bearing date, October 11th, 1887.

A. I do.

Q. You may state if that was published in the regular issue of the Nebraska State Journal of that time?

A. Yes, sir.

Mr. NORVAL: I now offer in evidence the advertising notice of the Capital National Bank, marked Exhibit No. 981.

Exhibit No. 981 received and read in evidence. (Identical with Exhibit X-981 hereof.)

"Capital National Bank,
Lincoln, Nebraska.

Capital, \$300,000.00.

C. W. Mosher, President.

H. J. Walsh, Vice P't.

R. C. Outcalt, Cashier.

Directors:

W. W. Holmes, D. E. Thompson, C. W. Mosher, R. O. Phillips,
E. P. Hamer, C. E. Yates, A. P. S. Stuart.

Exhibit X-981.

Acc'ts solicited, Banks, Bankers and Merchants."

* * * * *

455 (Lincoln Daily Call, Lincoln, Nebraska, December 18th,
1888.)

*Report of the Condition of the Capital National Bank, at Lincoln, in
the State of Nebraska, at the Close of Business Dec. 12th, 1888.*

Resources.

Loans and discounts.....	\$860,944.18
Overdrafts secured and unsecured.....	11,529.18
U. S. Bonds to secure circulation.....	50,000.00
Other stocks, bonds and mortgages.....	9,148.88
Due from approved reserve agents.....	83,964.65
Due from other national banks.....	38,539.83
Due from state banks and bankers.....	10,259.39
Real estate, furniture and fixtures.....	28,258.03
Premiums paid.....	4,000.00
Current expenses and taxes paid.....	21,112.31
Checks and other cash items.....	19,295.08
Bills of other banks.....	2,830.00
Fractional paper currency, nickels and cents.....	244.39
Specie.....	20,785.50
Legal tender notes.....	22,400.00
Redemption fund with U. S. Treas. (5% circulation)	1,730.00
Total	\$1,185,238.42

Liabilities.

Capital Stock paid in.....		\$300,000.00
Surplus fund.....		20,000.00
Undivided profits.....		37,614.80
National Bank notes outstanding.....		45,000.
Individual deposits subject to check....	\$397,275.24	
Demand certificates of deposit.....	117,922.95	
Cashier's checks.....	4,892.06	
Due to other National Banks.....	63,392.84	
Due to state banks and bankers.....	87,960.05	
Notes and bills rediscounted.....		671,443.19
		111,180.43
Total		\$1,185,238.42

STATE OF NEBRASKA,

County of Lancaster, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 15th day of December, 1888.

J. W. MAXWELL,
Notary Public.

Correct. Attest:

C. W. MOSHER,

C. E. YATES,

W. W. HOLMES,

Directors.

Exhibit X-982.

* * * * *

456 Mr. NORVAL: I now offer in evidence the report referred to by witness and ask to have same marked Exhibit No. 983.

Defendants object, severally, to its introduction for the reason that no foundation has been laid for its introduction; no allegations in the Petitions that any such a report was ever made or published, and for the further reason that the same is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 983 received and read in evidence. (Identical with X-983 hereof.)

(Copy on next succeeding page.)

457 (The Lincoln Daily Call), Seventh Year, Lincoln, Nebraska,
Saturday Evening, October 4, 1889. No. 95, Page 4.

*Report of the Condition of the Capital National Bank, at Lincoln,
in the State of Nebraska, at the Close of Business Sept. 30th,
1889.*

Resources.

Loans and discounts.....	\$800,159.88
Overdrafts, secured and unsecured.....	6,372.45
U. S. Bonds to secure circulation.....	50,000.00
Other stocks, bonds and mortgages.....	21,954.94
Due from approved reserve agents.....	76,238.34
Due from other National Banks.....	42,329.97
Due from State banks and bankers.....	5,390.35
Real estate, furniture and fixtures.....	43,741.70
Current expenses and taxes paid.....	7,935.58
Premiums paid.....	3,750.00
Checks and other cash items.....	3,964.67
Exchanges for clearing house.....	12,844.22
Bills of other banks.....	2,240.00
Fractional paper currency, nickels and cents.....	643.06
Specie	33,029.75
Legal tender notes.....	12,333.00
Redemption fund with U. S. Treas. (5% of circulation)	1,500.
Total	\$1,124,432.09

Liabilities.

Capital stock paid in.....	\$300,000.00
Surplus fund.....	24,000.00
Undivided profits.....	14,211.73
National Bank notes outstanding.....	45,000.00
Individual deposits subject to check... \$324,391.90	
Demand certificates of deposit..... 165,222.06	
Cashier's checks outstanding..... 12,597.50	
Due to other National Banks..... 84,604.80	
Due to state banks and bankers..... 92,722.00	
	<hr/>
	679,538.26
Notes and bills rediscounted.....	61,682.92
Total	\$1,124,432.91

STATE OF NEBRASKA,
Lancaster County, ss:

I, R. C. Outcalt — of the above named Bank, do solemnly swear
that the above named statement is true to the best of my knowledge
and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 4th day of October, 1889.

J. W. MAXWELL,
Notary Public.

Correct. Attest:

C. W. MOSHER,

C. E. YATES,

W. W. HOLMES,

Directors.

Exhibit X-983.

* * * * *

458 Mr. NORVAL: We now offer in evidence the notes indicated by the witness, and ask to have it marked Exhibit 984.

Defendants object, severally, to its introduction for the reason that no foundation has been laid for its introduction; no allegations in the Petitions that any such notice was ever made or published, and because it is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

Exhibit No. 984 received and read in evidence. (Identical with X-984 hereof.)

(See copy at next page hereof.)

459

EXHIBIT X984.

(Lincoln Daily Call, Lincoln, December, 16th, 1889.)

Report of the Condition of the Capital National Bank, of Lincoln, in the State of Nebraska, at the Close of Business December 11, 1899.

Resources.

Loans and discounts.....	\$808,781.26
Overdrafts, secured and unsecured.....	10,977.12
U. S. Bonds to secure circulation.....	50,000.00
Stocks, securities, claims and etc.....	41,954.94
Due from approved reserve agents.....	52,103.47
Due from other National Banks.....	22,423.53
Due from State Banks and bankers.....	18,564.82
Banking house, furniture and fixtures.....	5,770.00
Other real estate and mortgages owned.....	41,505.47
Current expenses and taxes paid.....	10,948.24
Premiums on U. S. Bonds.....	3,750.00
Checks and other cash items.....	8,330.76
Exchanges for clearing house.....	5,102.38
Bills of other banks.....	2,670.00
Fractional paper currency, nickels and cents.....	153.02
Specie.....	27,623.70
Legal tender notes.....	13,499.00
Redemption fund with U. S. Treas. (5% of circulation).....	1,709.41
Total	\$1,125,921.10

Liabilities.

Capital stock.....	\$300,000.00
Surplus fund.....	24,000.00
Undivided profits.....	24,126.30
National Bank notes outstanding.....	45,000.00
Individual deposits subject to check....	\$301,390.77
Demand certificates of deposit.....	157,159.04
Cashier's checks outstanding.....	2,695.20
Due to other National Banks.....	51,283.67
Due to state banks and bankers.....	70,087.40
	<hr/>
Notes and bills rediscounted.....	582,616.08
	<hr/>
Total	\$1,125,927.12

STATE OF NEBRASKA,

County of Lancaster, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 11th day of December 1892.

J. W. MAXWELL, *N. P.*

Correct. Attest:

C. W. MOSHER,

A. P. STUART,

W. W. HOLMES,

Directors.

* * * * *

460 Mr. NORVAL: I now offer in evidence the report found in the Call just identified by the witness and ask that the same may be marked Exhibit 985.

The defendants severally object to its introduction because no foundation has been laid for its introduction, and no allegations in the Petitions in these cases that any such note was ever made or published; and because the same is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants except.

Exhibit No. 985 is received and read in evidence. (Identical with Exhibit X-985 hereof.)

(Copy on next succeeding page.)

461

EXHIBIT X-985.

(The Lincoln Daily Call, Friday Evening, December 26, 1890.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business December 19th, 1890.

Resources.

Loans and discounts.....	\$847,442.40
Overdrafts, secured and unsecured.....	9,330.20
U. S. Bonds to secure circulation.....	50,000.00
Stocks, securities, claims and etc.....	16,909.88
Due from approved reserve agents.....	116,166.05
Due from other National Banks.....	26,033.84
Due from State Banks and bankers.....	2,993.22
Banking house, furniture and fixtures.....	5,770.00
Other real estate and mortgages owned.....	55,099.59
Current expenses and taxes paid.....	16,304.98
Premium on U. S. Bonds.....	2,400.00
Checks and other cash items.....	2,222.50
Exchanges for clearing house.....	15,235.52
Bills of other banks.....	3,535.00
Fractional paper currency, nickels and cents.....	188.30
Specie.....	59,640.50
Legal tender notes.....	2,505.00
Redemption fund with U. S. Treas. (5% of circulation).....	2,250.00
Total.....	\$1,234,030.88

Liabilities.

Capital stock.....	\$300,000.00
Surplus fund.....	28,000.00
Undivided profits.....	33,585.80
National Bank notes outstanding.....	45,000.00
Individual deposits subject to check.....	\$364,123.01
Demand certificates of deposit.....	270,168.96
Cashier's checks outstanding.....	7,298.89
Due to other National Banks.....	42,280.26
Due to state banks and bankers.....	46,924.39
Notes and bills rediscounted.....	730,795.51
Total.....	96,649.57
Total.....	\$1,234,030.88

STATE OF NEBRASKA,

County of Lancaster, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, Cashier.

Subscribed and sworn to before me this 26th day of December, 1890.

J. W. MAXWELL,
Notary Public.

Correct, Attest.

C. W. MOSHER,
D. E. THOMPSON,
W. W. HOLMES,
Directors.

* * * * *

462 Mr. NORVAL: We now offer in evidence the notice referred to and ask that the same may be marked Exhibit 986.

Defendants severally object to its introduction because no foundation has been laid for its introduction; no allegations in the Petitions that any such report was ever made or published, and because it is incompetent, irrelevant and immaterial. Objection overruled.

Each of the defendants excepts.

Exhibit No. 986 received and read in evidence. (Identical with Exhibit X-986 hereof.)

(See copy at next succeeding page.)

* * * * *

463 (The Lincoln Daily Call, Saturday Evening, July 18, 1891.
Page 4.)

*Report of the Condition of the Capital National Bank, at Lincoln,
in the State of Nebraska, at the Close of Business, July 9th, 1891.*

Resources.

Loans and discounts.....	\$898,011.57
Overdrafts, secured and unsecured.....	12,834.98
U. S. Bonds to secure circulation.....	50,000.00
Stocks, securities, claims and etc.....	2,913.49
Due from approved reserve agents.....	51,984.76
Due from other National Banks.....	23,946.91
Due from State Banks and bankers.....	2,880.04
Banking house, furniture and fixtures.....	5,770.00
Current expenses and taxes paid.....	3,815.30
Premium on U. S. Bonds.....	1,437.50
Checks and other cash items.....	5,662.26
Exchanges for clearing house.....	4,544.50
Bills of other banks.....	11,145.00
Fractional paper currency, nickels and cents.....	251.70
Specie.....	31,350.00
Legal tender notes.....	14,445.00
Redemption fund with U. S. A. Treas. (5% of circulation).....	600.00
Total.....	\$1,121,593.01

Liabilities.

Capital stock		\$300,000.00
Surplus fund		30,000.00
Undivided profits		17,304.87
National Bank notes outstanding.....		45,000.00
Individual deposits subject to check. \$367,258.70		
Demand certificates of deposit.....	139,199.07	
Cashier's checks outstanding.....	3,229.16	
Due to other National Banks.....	54,426.22	
Due to state banks and bankers.....	47,783.89	
Notes and bills rediscounted.....		611,897.04
		117,391.10
Total		\$1,121,593.01

STATE OF NEBRASKA,
County of Lancaster, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 18th day of July, 1891.

HAL C. YOUNG,
Notary Public.

Correct,—Attest:

C. W. MOSHER,
D. E. THOMPSON,
C. E. YATES,
Directors.

* * * * *

464 Mr. NORVAL: We now offer in evidence the notice published in the Call of that date, identified by *thw* witness, and ask that the same be marked Exhibit 987.

The defendants severally object to its introduction for the reason that no foundation has been laid for its introduction, and no allegations in the Petitions that any such report was ever made or published, and the same is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

EXHIBIT No. 987 Received and Read in Evidence:

(Identical with Exhibit X-987 hereof.)

(Copy at next succeeding page.)

465 (The Lincoln Daily Call, Thursday Evening, October 1891, Page 5.)

Report of the Condition of the Capital National Bank, at Lincoln in the State of Nebraska, at the Close of Business, September 1891.

Resources.

Loans and discounts.....	\$834,133.
Overdrafts, secured and unsecured.....	4,250.
U. S. Bonds to secure circulation.....	50,000.
Stocks, securities, claims and etc.....	53,033.
Due from approved reserve agents.....	52,788.
Due from other National Banks.....	15,670.
Due from state banks and bankers.....	9,521.
Banking house furniture and fixtures.....	5,779.
Current expenses and taxes paid.....	7,547.
Checks and other cash items.....	7,060.
Exchanges from Clearing house.....	5,873.
Bills of other banks.....	630.
Fractional paper currency, nickels and cents.....	249.
Specie.....	26,653.
Legal tender notes.....	18,984.
Redemption fund with U. S. Treasurer (5% of circulation).....	2,250.
Total.....	\$1,094,453.

Liabilities.

Capital stock paid in.....	\$4,300,000.
Surplus fund.....	32,000.
Undivided profits.....	14,785.
National Bank notes outstanding.....	45,000.
Individual deposits subject to check... \$276,860.66	
Demand certificates of deposit.....	227,416.81
Cashier's checks outstanding.....	3,914.82
Due to other National Banks.....	40,262.69
Due to state banks and bankers.....	55,641.64
Notes and bills rediscounted.....	98,571.5
	604,096.6
	\$1,094,453.7

STATE OF NEBRASKA,

Lancaster County, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 1st day of October, 1891.

HAL C. YOUNG,
Notary Public.

Correct,—Attest:

C. W. MOSHER,
A. P. S. STUART,
E. P. HAMER,

* * * * *

466 Mr. NORVAL: We now offer in evidence the notice referred to and ask that the same may be marked Exhibit 988.

Defendants severally object to its introduction for the reason that no foundation has been laid for its introduction, and no allegations in the Petitions that any such notice or report was ever made or published and because the same is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

EXHIBIT No. 988 Received and Read in Evidence:

(Identical with Exhibit No. X-988 hereof.)

(Copy on next succeeding page.)

467-471 (The Lincoln Daily Call, Lincoln, December 14th, 1891.)

Report of the Condition of the Capital National Bank, at Lincoln, in the State of Nebraska, at the Close of Business, December 2nd, 1891.

Resources.

Loans and discounts.....	\$870,255.72
Overdrafts, secured and unsecured.....	3,164.20
U. S. Bonds to secure circulation.....	50,000.00
Stocks, securities, claims and etc.....	53,513.49
Due from approved reserve agents.....	52,681.04
Due from other National Banks.....	11,701.37
Due from state banks and bankers.....	7,415.14
Banking house furniture and fixtures.....	5,770.00
Current expenses and taxes paid.....	12,881.93

Checks and other cash items.....	8,595.13
Exchanges from Clearing house.....	8,510.79
Bills of other banks.....	1,215.00
Fractional paper currency, nickels and cents.....	241.60
Specie	46,011.50
Legal tender notes.....	9,940.00
Redemption fund with U. S. Treasurer (5% of circulation)	2,250.00
Total.....	\$1,143,946.88

Liabilities.

Capital stock paid in.....	\$300,000.00
Surplus fund	32,000.00
Undivided profits	23,276.89
National Bank notes outstanding.....	45,000.00
Individual deposits subject to check... \$271,018.85	
Demand certificates of deposit..... 207,710.11	
Due to other National Banks..... 62,312.57	
	\$77,432.32
Due to state banks and bankers.....	618,473.85
Notes and bills rediscounted.....	125,193.14
	\$1,143,946.88

STATE OF NEBRASKA,
Lancaster County, ss:

I, R. C. Outcalt, Cashier of the above named Bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed in my presence and sworn to before me this 14th day of December, 1891.

HAL C. YOUNG,
Notary Public.

Correct. Attest:

C. W. MOSHER,
C. E. YATES,
A. P. S. STUART,
Directors.

Exhibit X-988.

* * * * *

472

Mr. F. S. Johnson.

Direct examination.

Read in evidence as follows:

Q. Where do you reside?

A. Milford, Nebraska.

Q. How long have you resided there?

A. About 22 years.

Q. What is your business?

A. Milling and banking business.

Q. And what firm are you a member of, if any?

A. Of the firm of F. S. Johnson & Co.

Q. And was that firm in business and doing business as bankers and millers in June and July 1886?

A. Doing business then as millers.

Q. You may state if you are the senior member of the firm?

A. Yes, sir.

Q. And the manager?

A. Yes, sir.

Q. You may state if the firm, F. S. Johnson & Co., gave an obligation or note to the Capital National Bank, or to any one for the Capital National Bank in June or July, 1886, for \$9,968?

A. No sir.

Q. You would have had knowledge of it if any such transaction took place?

A. Yes sir, I would have had knowledge of it if it had taken place.

473 Q. Did you ever owe that bank such a note, or pay the bank such a note?

A. No sir.

Witness excused.

* * * * *

474

George W. Post.

Direct examination.

Read in evidence by Mr. NORVAL as follows:

Q. Where do you reside, Judge?

A. York, Nebraska.

Q. How long have you resided in York?

A. Oh, something over twenty five years.

Q. What is your business?

A. I am a banker.

Q. You may state if you ever knew one E. W. Mosher, or Edwin W. Mosher?

A. Yes sir, I knew him.

Q. You may state where Mr. Mosher resided in the early 90's and latter part of '89 and '88?

A. He resided in York.

Q. You may state if you were acquainted with his financial and property condition and standing in,—commencing with 1890 and up to January 1893?

A. Yes, I was pretty well acquainted with it at that time.

Q. You may state if you know whether or not he was owing obligations at that time, during those years,—well from 1889 up to 1893.

A. Yes I know he was owing some obligations but I couldn't tell how many.

Q. You may state if you know, whether or not Mr. E. W. Mosher was solvent and able to pay his debts from 1890 up to January 1893.

475 A. I think I know, yes sir.

Q. Well, state what his condition was with reference to being able to pay his debts during that time, as to being solvent or insolvent.

A. I think he was insolvent.

Q. Did you know the firm of Stark & Mosher?

A. Yes sir.

Q. Did you know Mr. Stark, a member of the firm of Stark & Mosher?

A. Yes sir.

Q. You may state if you knew his financial condition during the same period that I have interrogated you about as to Mr. Mosher.

A. I have not as intimate a knowledge of his affairs as I had of Mosher's. I knew in a general way about him, but I have not as intimate personal acquaintance with his business that I had with Mosher's.

Q. Do you know whether he paid his obligations or not?

(The objections were sustained. No answer.)

Q. Do you know of the firm of Stark & Mosher, and their responsibility?

A. Yes sir, in a general way.

Q. You may state what that was.

476 & 477 A. I think they were irresponsible.

Q. And were you acquainted with one William A. Sharrar, who formerly lived at York?

A. Associated with Mosher there?

Q. Yes, sir.

A. Yes, I knew him.

Q. And did you know him during the period I have been interrogating you about?

A. Yes sir.

Q. Do you know his standing and property conditions during that period?

A. Yes sir.

Q. You may state what it was as to solvency or insolvency.

A. He was insolvent.

* * * * *

478

Mr. A. L. Clarke.

Direct examination.

Read in evidence by Mr. NORVAL:

Q. You may state your name.

A. A. L. Clarke.

Q. Where do you reside?

A. In Hastings.

Q. What is your occupation?

A. I am a banker.

Q. With what institution are you associated?

A. The First National Bank.

Q. You are President of that bank?

A. Yes sir.

Q. How long have you been its President?

A. Since its organization in 1881.

Q. And have you been President continuously from that date up to this?

A. Yes, sir.

Q. I will ask you to state if the First National Bank of Hastings, of which you are President, executed to the Capital National Bank of Lincoln, Nebraska, on or about the 20th day of July 1886 a note for the sum of \$10,000.00.

A. It did not.

Q. Or at about that time?

A. No sir.

Q. Did the bank, of which you are president, the First National Bank of Hastings, execute to anyone for the Capital National Bank, such a note?

479-502 A. No sir.

Q. Did the First National Bank of Hastings ever execute to the Capital National Bank, or to anyone for that bank, a note for the sum of \$20,000.00 during the month of June or July, 1886?

A. It did not.

Q. Did the First National Bank of Hastings, owe or pay to the Capital National Bank any such note?

A. No sir.

Witness excused.

* * * * *

503 Testimony of Mr. G. W. SHRECK offered and read in evidence.

Direct examination:

Q. Where do you reside?

A. York.

Q. What is your business at present?

A. I am in the real estate business.

Q. What official position did you hold in York county in 1890 and subsequent and prior?

A. I was sheriff of York county.

Q. How long were you sheriff?

A. From 1888 to 1893.

Q. You may state if you were well acquainted with one W. A. Sharar, who lived in York county?

A. Yes, sir.

Q. Were you acquainted with his financial standing up to 1893?

A. Yes, sir.

Q. You may state if you know whether or not he was solvent, or insolvent?

A. He was insolvent.

Q. And how long had he been insolvent?

A. Oh, for a number of years before that, I don't remember now.

Q. About how long had you known him?

A. I had known him about,—since 1880.

504 Q. And he has been insolvent ever since?

A. He has been insolvent since 1887 anyway.

Q. Did you know one, Mr. Stark that lived there, that was in business with Mr. E. W. Mosher?

A. Arthur M. Stark?

Q. Yes sir.

A. Yes sir.

Q. You may state how long you knew Mr. Arthur M. Stark.

A. I knew him since he came to York county I suppose, about eight or ten years. I knew him from the time he came there until he left.

Q. You knew him for about eight or ten years, now when did he leave there, about how long ago?

A. He must have left there along in 1892; somewheres along there,—from 1890 to 1892.

Q. With reference to the time of the failure of the Capital National Bank, which was on January 21st, or 23rd, 1893, how long had he left before that?

A. Oh, some two or three years before that, is my recollection.

Q. You may state if you knew anything about his financial condition while he resided there in York?

A. That is a pretty hard question to answer "yes" or "no."

Q. The question is, do you know?

A. Yes, sir.

Q. You may state what was his financial condition at that time with reference to solvency or insolvency.

A. He was always considered insolvent.

505 Q. And for how long?

A. I think during the whole time he was there.

Q. You may state if you were acquainted with one Edwin W. Mosher.

A. Yes, sir.

Q. How long did you know him?

A. Oh, I had known him for fifteen years or more.

Q. You knew him from the time he came to York?

A. Yes, sir.

Q. You were there when he came?

A. I think so, yes sir.

Q. And about when did he leave York?

A. He left York in 1893, I think.

Q. Before or after the bank failure, the Capital National Bank failure?

A. It was afterwards, I think.

Q. You may state if you were acquainted with his financial standing and condition from 1890 up to 1893, the time of the failure of the Capital National Bank?

A. Yes sir.

Q. You may state what his condition was as to solvency or insolvency.

A. From the latter part of 1890 to 1893 he was considered insolvent.

Q. From the latter part of 1890 to 1893?

Defendants object as incompetent, immaterial and calling for conclusion. Overruled. Exception.

A. Yes, that is, he was execution proof,—supposed to be.

Q. You haven't known him since then?

A. No sir, not since he left York.

506 Q. Has he ever returned to York, since he went away?

A. Not that I remember of.

No cross examination.

Witness excused.

507 Testimony of Mr. EDWARD HURLBUT, JR., read in evidence.

Direct examination:

Q. You may state your name.

A. Edward Hurlbut Jr.

Q. Where do you reside?

A. Hastings.

Q. How long have you resided there?

A. About two years.

Q. Are you acquainted with one Charles W. Mosher, formerly president of the Capital National Bank at Lincoln?

A. Yes sir.

Q. Have you ever been associated with him in any business?

A. Yes, sir.

Q. Were you associated with him in connection with a company commonly known as the Western Manufacturing Company?

A. I worked for Mr. Mosher, yes sir.

Q. When did that commence to exist?

A. In 1884 or 1885, I believe.

Q. When did it cease to do business?

A. We ceased to be in active business in 1888 or 1889.

Q. You may state who comprised that company, or firm.

A. C. W. Mosher.

Q. Was there anyone else?

A. No sir.

Q. What was the nature of your interest in the company?

A. I worked on a salary and a per cent of the profits.

Q. Did the company during its existence execute any notes payable to the Capital National Bank?

A. Yes sir.

Q. Who signed those notes for the Western Manufacturing Company?

508 A. I did.

Q. You may state what amount of notes the Western Manufacturing Company was owing the Capital National Bank at the time it ceased doing business in 1888 or 1889, when you say it did cease to do business?

A. My judgment would be,—I have no way of knowing definitely, but my judgment would be that there was from \$25,000 to \$35,000 worth of old notes.

Q. Did they make any notes, or did you on behalf of the company execute any notes to the Capital National Bank after the Western Manufacturing Company ceased to do an active business?

A. Yes, sir.

Q. Now you may state how long they continued, or how long you continued on behalf of the Western Manufacturing Company to execute notes to the Capital National Bank?

A. Until the failure of the bank.

Q. Until the failure of the Capital National Bank?

A. Yes, sir.

Q. You may state, if you know, how many notes, or the amount of notes of the Western Manufacturing Company of which you were manager, were held by the Capital National Bank, or had been rediscounted by the Capital National Bank, or both, at the time of its failure in January, 1893?

509-521 Q. For what amounts or denominations were those notes that you signed as manager of the Western Manufacturing Company, which were executed to the Capital National Bank?

A. They were mostly \$5,000.00 each.

Q. Do you know what became of the notes after you executed them?

A. I do not.

Q. What did you do with the notes?

A. I gave them to Mr. Mosher.

Q. You may state if you know what became of the notes that those new ones were given to take up, or renew?

A. Sometimes when the notes would be renewed he would give me the old notes, but mostly he would not.

Q. How often do you remember that Mr. Mosher gave you the

old note when you executed for the company a new one in place of it?

A. I couldn't state how often. I know he gave me some, and sometimes he would tell me these notes were rediscounted.

* * * * *

522 Q. When this company was organized what capital if any did Mosher put into the company?

A. Why we borrowed from the Capital National Bank \$25,000.00

Q. Was that all that was put into the company?

A. That was all that was put in at that time.

Q. In other words did the company begin its existence on borrowed capital?

A. Yes, sir.

Q. Wholly.

A. Yes, sir.

Q. Now was the company financially successful or did you lose money?

A. We didn't make any money.

Q. Did you lose any money?

A. Yes, sir.

* * * * *

525-536 Redirect examination.

Read as follows:

Q. Do you know what was done with the notes you signed for this company after you executed them and delivered them to Mr. Mosher?

A. No, sir.

Q. Do you know whether they were issued as renewals of other notes or put into the bank as original paper?

A. I don't know only what I was told, that is all.

Q. You don't know whether they were used as rediscounts or otherwise, do you?

A. I do not.

Q. You made notes whenever requested to do so by Mr. Mosher?

A. Yes, sir.

Witness excused.

* * * * *

537 H. J. WHITMORE produced as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows:

Direct examination.

By Mr. THOMAS:

Mr. ROSE: We will concede the qualifications of the witness as an accountant.

Q. State your name?

A. H. J. Whitmore.

Q. And your place of residence, and age?

A. Lincoln,—53.

Q. How long have you resided in Lincoln, Nebraska?

A. Since '81.

Q. What is your profession or occupation?

A. I am an attorney; also I have been a national bank examiner, and do some work as an accountant.

Q. You were on the witness stand in the trial of this case in 1902 in this court?

A. Yes, sir.

Q. How long were you a national bank examiner?

A. Four years; from 1894 until '99,—February '99.

Q. Ever act as Receiver for any national banks that had failed?

A. I was temporary receiver of a number of banks, and permanent receiver of the First National Bank of Neleigh from 1899 to 1901.

Q. You may state—you made any examination of the books of the Capital National Bank of Lincoln, Nebraska?

A. I made an examination of the books of the bank in 1902 beginning I think in *in* April, 1902, and continuing for some weeks; and then in the last month or six weeks I have gone over the books to some extent.

538 Q. And have you made an examination of the books of the Marsh National Bank?

A. Such books as we had access to.

Q. And have you made an examination of the books of the Marsh Brothers and Mosher company?

A. To some extent. The ledger,—the general ledger.

Q. About how much time have you spent, did you think, all together in examining the various books of the three institutions, to which I have referred?

A. Oh, I couldn't say as to that,—about fifteen days recently, and probably six weeks eight years ago.

Q. Were any of the books of the Capital National Bank and its predecessors, the Marsh National Bank, and Marsh Brothers and Mosher in your custody a part of the time?

A. The books were brought up here in 1902 at the former trial, and the Comptroller through Mr. Lynch, an employee of the office, placed me in charge of the books during that trial; afterwards I had nothing to do with them; in fact I know that Mr. Jones was made custodian of the books after the trial ended.

Q. After they went out of your custody they were turned over to the custody of Mr. Jones, you mean?

A. Yes, sir.

Q. Now, Mr. Whitmore, have you made an examination of the Ledger of Marsh Brothers Mosher and company, and also of the Ledger of the Marsh National Bank, to ascertain what relation those books had to each other, in the manner—or as to whether or not one is the successor of the other?

A. I have.

Q. And are those books in court at this time?

A. Yes, sir.

Q. And the book identified here as Exhibit 9 by the reporter is that the ledger of the Marsh Brothers and Mosher company?

539 A. Yes, sir.

Mr. THOMAS: I ask the reporter to identify this record as Exhibit X-9.

Book so marked.

Mr. THOMAS: I ask the reporter to identify this book of the Marsh National Bank as Exhibit X-10.

Book so identified.

Q. Now are the books referred to here as Exhibits X-9 and Exhibit X-10, the two ledgers to which you have just referred?

Q. You may examine them, if you wish. (Witness examines records referred to.)

A. I will say that Exhibit X-9 is the General Ledger of Marsh Brothers Mosher and Company, and Exhibit X-10 is the General Ledger of the Marsh National Bank.

Mr. THOMAS: In the depositions that were taken before L. A. Ricketts, the notary identified these exhibits as,—our Exhibit X-9 here, he identified as 9, and our exhibit X-10 here, he identified as Exhibit 10, and the signature of the notary appears under each identification.

Mr. THOMAS: The plaintiffs then offer in evidence the following on the first page of the ledger referred to as Marsh Brothers Mosher & Company, and our Exhibit X-9 to-wit:

"Ex. 'A9'

Exhibit '9'

L. A. Ricketts, N. P."

540 Mr. THOMAS: We offer in evidence the following portion contained on Page 1 of Exhibit X-10, being identified by the notary and the identification of the notary, Mr. Ricketts before whom the depositions referring to these books were taken, and we ask that it be marked Exhibit "X10."

"Exhibit 10

Q. Now you may state, Mr. Whitmore, what you find by an examination of these two ledgers as to the relation they bore to each other.

A. Exhibit X-10 the first entries and corresponding accounts is a continuation of the entries in the Marsh Brothers Mosher and Company ledger, Exhibit X-9.

Q. You may state in a general way if the account—as they appear on Exhibit x-9,—the balances have been carried to ledger x-10.

A. The balances do not now appear to be the same.

Q. In what particular?

A. The account of Bills Receivable, and account called Collection Account, the Omaha National Bank account and the Bills of Exchange account.

541 Q. With reference to the remainder of the accounts, state if the balances as they appeared at the close of *E*ldger Exhibit X-9 were carried forward as balances into Ledger X-10.

A. They were.

Q. In other words, did the assets and liabilities as they appeared in ledger, Exhibit x-9, become and were carried over as the assets and liabilities on ledger X-10 with the exception of the items you have referred to, and were shown on ledger x-10 at the beginning of the business which that ledger reflects?

A. Yes, sir.

Mr. THOMAS: I will ask the reporter to identify the first Journal of the Marsh National Bank as Exhibit x-1.

(Book so identified.)

Q. Now Mr. Whitmore, in referring to the several accounts which you say do not now appear to be the same in the two ledgers, that is, where the balance at the close of Ledger Exhibit X-9 as not shown to be the same as the balance carried over at the beginning of Ledger X-10,—you may state which is the first one that you find is not the same.

A. The first one is the account that is known as the Stock & Bond account.

Q. Now in the ledger x-9 how does that appear at the close of that ledger?

542 A. \$30,540.00.

Q. At what page on the ledger does that appear?

A. Page 639.

Q. Of Exhibit x9?

A. Of exhibit X-9.

Q. What does that account show as the amount of stock and bonds owned at the close of that ledger account?

A. \$30,540.00.

Mr. THOMAS: I offer in evidence Exhibit "aa" being Page 639 of this ledger Exhibit X-9.

Exhibit "aa" received in evidence as follows:

Stock & Bond Account.

1882.			
Jan.	6	370	7500.
Mar.	15	428	300.
Apr.	21	461	7500.
			15300. 15300.
July	1st Balance		15300.
	24	639	7500.
Aug.	23	565	30.
Sep.	4	575	30.
Dec.	4	61	60.
	29	101	7500.
May	9	321	60.
Jun.	18	387	60.
			30540"

543 & 544 Q. Now to what page of the ledger, Exhibit x10 is that transferred?

A. Page 7.

Q. How does the balance at the beginning of that account appear, Mr. Whitmore,—in what amount?

A. 540.

Q. You may examine that account and state if there appears to have been any changes or erasures in the amount of the red ink balance.

A. The paper shows indication of erasure.

Q. At what place?

A. It shows the erasure of the whole of the original entry that was placed there.

Q. In how many columns?

A. In thousands, tens of thousands, and the other columns.

* * * * *

545 Q. Now referring again to this account of Stocks & Bonds to which we have referred, I will ask you if the General Balance book, which has been identified as Exhibit X-18, contains an entry with reference to this same account?

A. It does.

Q. And where does that appear?

A. On the fourth line of the first column; the column headed "Monday, July 2, 1883. The opposite page is numbered "1". There is only one side of the leaf paged.

Mr. THOMAS: I will ask the reporter to identify that line.
(Line Identified as Exhibit x-1030.)

Q. Now does that same account appear at pages 2, 3, 4, and 5 of this same balance book?

A. Yes sir, it does.

Q. Now at what amount does this balance book just referred to show the account of Stocks & Bonds?

A. It now shows at the opening of the account \$540.00.

546 Q. Under what date does it appear that way, Mr. Whitmore?

A. Under the head of Monday, July 2, 1883.

Q. You may examine that entry under that date and state if you can tell whether or not there has been any erasures or changes in the amount of this account in this book.

A. I examined this account eight years ago and found that the original entry had been changed by erasure, and that erasure appears every day from the opening of this book until the date marked the 27th of July.

Q. And in what columns do those erasures appear, with reference to hundreds, thousands or tens of thousands.

A. Thousands and tens of thousands.

Q. And under the date of Monday, July 9, 1883, I will ask you

to examine that and state what appears there in the,—opposite the account in Stocks and Bonds account.

A. Under date of Monday July 9th, the item appears as "0540".

Mr. THOMAS: We offer in evidence the Exhibit X-1030, to include the headings, giving the day of the week and the month date and year above each item of the Stocks & Bonds account.

Entry offered is received and read in evidence.

547

(EXHIBIT X-1031.)

Stock- & Bonds a/c.

Monday July 2/83	Thursday July 5/83
540	540.
Friday July 6/83.	Monday July 9/83
540	0540
Tuesday July 10/83	Thursday July 12/83
1081.66	1081.66
Friday July 13/83	
1666.74	
Monday July 16/83	Wednesday July 18/83
1666.74	1666.74
Thursday July 19/83	Saturday July 21/83
1753.95	1753.95
Monday July 23/83	Wednesday July 25/83
1753.95	1946.06
Thursday July 26/83	Saturday July 28/83
1946.06	1946.06
Monday July 30/83	
1946.06	

Q. Now Mr. Whitmore, I will ask you to state if you are able to tell as an expert about when those erasures were made, and give your reasons for your conclusion.

A. I wouldn't attempt to state the hour and minute, or possibly the day when those changes were made, but the book shows that the entries were originally made a certain amount. That went on up about the 27th of July when the erasures ceased, and all the accounts where the charges were made appear the same way. The conclusion is that the entries were made correctly when they opened the book and that after nearly a month they concluded that they desired to make a change, and they did it in this way by erasing those amounts and transferring to other accounts.

* * * * *

548 Q. Now Mr. Whitmore, from where are the entries that appear on the ledger of the Marsh National Bank taken, that is, what kind of entries does that ledger contain and where do they come from?

A. Well the entries upon the ledger are supposed to come from the Journal.

549 Q. Is the ledger a book of original entry?

A. The ledger is not a book of original entry.

Q. And can an entry properly appear upon the ledger that is not taken from the journal?

A. Well in transferring from one ledger to another, of course the opening entries on a ledger would be made without reference to the Journal; the transfer of the balances.

Q. That would be a mere transferring of balances which are indicated in red ink?

A. Yes, sir.

Q. But after that transfer has been made from one ledger to another then can an entry properly appear on the ledger that is not taken from the Journal?

A. No, except as to cash, but the cash in a bank Journal is merely the balance to make the two sides agree.

Q. That is the Cash Journal never contains any entry that themselves are written out as cash?

A. No sir.

Q. But the balance at the end of the day is simply assumed to be cash.

A. The difference between the debit and credit sides of the Journal is supposed to be the cash on hand.

Q. Now have you examined the Journal of the Marsh National Bank, identified by the reporter as Exhibit X-1, to see if there is any entry in that Journal to justify the changing of the Stocks & Bonds accounts from \$30,540 to \$540?

A. I have.

Q. And what do you find?

550 A. I found no foundation in the Journal for making any change in the account.

Q. Now, Mr. Whitmore, I will ask you to state what you found

with reference to the account of Bills Receivable as it appears on the ledger of the Marsh National Bank, identified as Exhibit x-10?

A. I found that changes were made in the account the same as in the Stocks & Bonds account.

Q. And does that account appear on the Balance Book to which you have just referred?

A. Yes sir, it does.

Q. Where does it appear on the Balance Book, Exhibit x-18?

A. The seventh line from the top.

Q. What page?

A. Page 1.

Q. And how many days does that change occur?

A. From the 2nd of July, 1883 to the 27th of July, 1883.

(Exhibit X-1031 Identified.)

Mr. THOMAS: We offer the following portion of Exhibit X-18, namely, the line indicated as X-1031, as it appears on pages 1, 2, 3, 4 and 5, together with the headings and the dates at the top of the pages.

Entries offered received and read in evidence. (Exhibit X-103.)

B/R

Monday July 2/83
 278,029.33
 Friday July 6/83
 292,445.75
 Monday July 9/83
 298,839.41
 Thursday July 12/83
 299,650.41
 Monday July 16/83
 291,938.08
 Thursday July 19/83
 301,429.69
 Monday July 23/83
 300,183.08
 Thursday July 26/83
 297,973.08
 Monday July 30/83
 297,819.

(EXHIBIT X-1031.)

Tuesday July 3/83
 286,835.30
 Saturday July 7/83
 298,108.16
 Tuesday July 10/83
 299,420.41
 Friday July 13/83
 293,155.01
 Tuesday July 17/83
 292,623.08
 Friday July 20/83
 301,260.08
 Tuesday July 24/83
 300,908.08
 Friday July 27/83
 297,044.
 Tuesday July 31/83
 298,194.00

Thursday, July 5/83
 287,250.30

Wednesday, July 11/83
 299,445.41

Saturday July 14/83
 291,357.66

Wednesday July 18/83
 300,277.69

Saturday July 21/83
 300,920.08

Wednesday July 25/83
 300,073.08

Saturday July 28/83
 297,694.00

Q. I will ask you, Mr. Whitmore, what changes appear to have been made on the Balance Book under the dates just referred to.

A. Tens and hundreds of thousands changed.

Q. And continues that way for how many days?

A. On up to the 27th.

Q. Now I will ask you to state if the accounts on the Balance books for these various dates balance?

552 A. Yes, sir, the assets and liabilities equal each other.

Q. And do you find any other changes having been made,—erasures or changes made in any other accounts except in Stocks & Bonds and Bills Receivable?

A. I think those two were the only ones that the changes were made in.

Mr. ROSE: To make changes in any other way, it would have thrown it out of balance.

A. If they hadn't added to some other account what they took out of one, it would.

Q. Now calling your attention to the transfer of the ledger account, Bills Receivable, from the Marsh Brothers, Mosher and Company ledger, to the ledger of the Marsh National Bank, I will ask you if there appears to have been any change in this account as it appears on the Marsh National bank ledger?

A. The ledger shows a change has been made in the amount.

Q. In what column?

A. Well it is the column of the amounts on page 15,—the left hand column.

Q. Does that appear on page 15 of Exhibit X-10?

A. X-10, yes sir.

Q. And does the balance appear to have been changed on page 16 of the same account?

A. The balance brought forward is changed.

Q. Now you may state, Mr. Whitmore, what effect those changes had as to these two accounts, the Stocks & Bonds account and the Bills Receivable account?

553 & 554 A. The Stocks & Bonds account appears on the Marsh National Bank books as thirty thousand dollars less, and the Bills Receivable as thirty thousand dollars more than they appeared on the books of Marsh Brothers Mosher and Company.

Q. Now have you examined the Journal of the Marsh National Bank on the dates on which these changes appear to ascertain if there was any entry upon the Journal that would justify a change in the amount of Bills Receivable to the amount of this \$30,000?

A. To what date do you refer?

Q. From July 2nd until the 27th,—as far as the changes occur.

A. I am unable to find anything on the Journal of the Marsh National Bank which would justify a change of the amount in these two accounts.

* * * * *

555 Q. And how was the transfer made in this particular bank, when it was made,—the Marsh National Bank?

A. Apparently it was simply a transfer of the balances from one ledger to a new ledger, and then later on these balances were changed for some reason and the accounts shifted.

Q. Now have you examined the account of stocks and bonds as it was carried on the ledger of Marsh Brothers, Mosher & Co.?

A. Yes, sir.

Q. To ascertain some of the items that entered into it to make the balance of \$30,450?

556 A. I have.

Q. You may state what items entered into that account.

Q. Before you answer that question. From what book did you get that information?

A. From the ledger of Marsh Brothers Mosher & Company.

Q. The one that is in court here at this time?

A. Yes sir, Ledger No. 1, page 639.

Q. Now you may state.

A. I can't give the exact amount of \$30,540.00 as it appears upon the books of Marsh Brothers Mosher & Company, but examining that account, the stocks and bonds account, and what was known as the C. W. & W. W. Marsh account on the same ledger, I find that at different dates in 1882, there were four items of \$7500.00 each that went into the stocks and bonds account and were credited to this W. W. Marsh, or Marsh Binder Manufacturing Company, on page 9 of the Ledger, and the C. W. & W. W. Marsh account appears on page 8 of the same ledger, and the only thing I can say is that that Stocks & Bonds account seems to be made up of items transferred from these two accounts,—Marsh Binder Manufacturing Company, and C. W. & W. W. Marsh. The Journal of Marsh Brothers Mosher & Company has never been in my possession and I have never had a chance to examine that.

557 Q. Mr. Whitmore, have you examined the books of the Marsh National Bank to ascertain if they disclose an account with Donnell, Lawson & Simpson?

A. Yes, sir.

Q. You may state what the books show, giving the dates.

A. I don't know whether I understand that question, Mr. Thomas.

Q. I asked you if you had examined the books of the Marsh National Bank with reference to whether it contains an account with Donnell, Lawson & Simpson.

A. I said I had.

Q. In what books does that appear?

A. It appears in the General Ledger, and from time to time in the Journal of the Marsh National Bank, and also in the——

Q. Are those books in court?

A. Yes, sir.

Q. Now state what the books show with reference to that account.

A. I find that they had a running account with Donnell, Lawson & Simpson of New York carried on their General Ledger and from time to time in their Journal and also as an item in their Daily Balance Book. From the General Balance book that account was ap-

558 parently one which they used as a checking account for the purpose of drawing drafts upon New York.

Q. Does that account appear in—

A. Ledger 1, page 159.

Q. That is the Exhibit referred to as X-10?

A. It is in Exhibit X-10 at page 159.

Q. The account begins at page 147 and extends to page 160?

A. That was the account; it includes page 159.

Q. You may state what that account discloses as to the indebtedness of Donnell, Lawson & Simpson to the Capital National Bank?

A. It doesn't disclose anything about indebtedness to the Capital National Bank.

Q. I mean the Marsh National Bank.

A. It shows that there were numerous debit entries made, charges against the Donnell, Lawson & Simpson account, and also a good many credits to their account, and the account was finally closed out.

Q. How was the account finally closed out on the books to which you have referred?

A. On the 9th of May, 1884, the Balance Book shows an erasure in this account—changes of the figures in the thousands and tens of thousands columns—also on Saturday May 10th—those erasure and changes continue until the 19th of May and then there is a credit on the ledger of \$10,000 to this account, which makes the

559 Balance Book then agree with the Ledger. On the 19th of May, the Chemical National Bank of New York is charged with \$10,000 and Donnell, Lawson & Simpson was credited with \$10,000. On the 26th of May the Commercial National Bank of Chicago is charged with \$10,000 and Donnell, Lawson & Simpson credited with \$10,000. On the 27th of May Donnell, Lawson & Simpson are credited "To balance account" with \$8,174.70 and on that day a note of C. W. Mosher, or what purports to be a note,—No. 5629, is put in the bank for the same amount \$8,174.70, and that balances the account.

* * * * *

560 Q. Now I will ask you to state if you have examined the books of the Marsh National Bank and the Capital National Bank to ascertain if any notes, or Bills Receivable of Donnell, Lawson & Simpson entered into the assets of either of those banks?

A. I have.

Q. And have your prepared from the books a schedule showing the amounts and numbers of notes, and dates when taken, and when indicated as paid by the books?

A. I think I have a correct ledger account of the Bills Receivable of Donnell, Lawson & Simpson, as they appear in the books of the Capital National Bank.

Q. And from what books was that statement or schedule compiled?

A. From the Journals, Discount Registers, and the Discount Blotters.

Q. Can you give the result of that investigation in schedule form?

A. Yes, sir.

Q. You may state your conclusions as to what notes were taken in, as to the notes of Donnell, Lawson & Simpson, giving the date and the number of the note and the amount.

561 A. September 8th, 1884, I found a note marked Donnell, Lawson & Simpson, No. 5629, for \$8,338.20 was entered as paid. This number refers to a number of the Marsh National Bank; when the Capital National Bank was organized and took over the business of the Marsh National Bank they apparently continued the same number of notes the same way as the Marsh National had, and if you refer to the Journal,—the first Journal of the Capital National, you will find that the first note is the next number in numerical order after the last one taken in the Marsh National, and this note I found was taken by the Marsh National Bank and apparently transferred over with the assets to the Capital National Bank.

At the time that note was paid on September 8th, 1884, a new note, No. 6526 for \$8379.05 was taken. Then on October 14th 1884, No. 6841 for \$5,084.76 was taken, and the previous number 6526 was paid, and also a Number 6842 for \$4695.79 was taken in. That left in the bank then \$9,780.55 of the Donnell, Lawson & Simpson paper. On May 7th, 1885 two notes were taken, Numbers 8448 and 8449, the first one for \$9391.46 and the other one for \$9351.57. The amount of the first note was on this day,—the exact amount,—credited to the Commercial National Bank of Chicago, and the amount of the second note was credited on the same day to the Chemical National Bank of New York. That made \$28,563.68 of paper of Donnell, Lawson & Simpson that was in the Capital National Bank on May 7th, 1885. On July 13th, No. 8449 and No. 8448 were marked as paid. I don't know what or how they were paid, but on the same day what was known as the Bills of Exchange Account was charged with \$16,358.15.

Then on July 20th a note, number 9133, \$9391.57 was taken being the exact amount of No. 8449 which had been paid on the 13th of July, and on that day Bills of Exchange were credited with the same amount they were charged with on the 13th of July, \$16,358.15.

562 Then on July 24th, No. 9157 for \$9,391.56 was taken, being the same amount as No. 8448, marked paid on the 13th of July. On August 13th, 1885 No. 9157 and No. 9133, the last two notes and the two earlier notes, No. 6841 and No. 6842 were all marked as paid. No. 6842 was paid for \$388.98 more than it was taken for apparently; whether they added interest at some time I don't know, and on this day No. 9356 for \$10,200 and No. 9357 for \$20,300 were taken. In other words \$28,952.63 were credited as paid, and \$30,500 charged as taken on that day. This left a balance of paper apparently of \$30,111.02, but as a matter of fact they had notes amounting to \$30,500.00. This difference of \$388.98 makes the difference in the balance.

On March 2nd, 1886—that \$30,000 continued then until March 2nd, 1886 when No. 9356 was paid in part and the sum of \$5,000

was credited. On March 3rd, the balance of this number \$5,200 was marked as paid, and the same amount, \$5,200 was charged to the Chemical National Bank of New York. That left \$19,911.02 of paper, according to the ledger account, but really it was over \$20,000 because of this credit.

December 27th, No. 30289 for \$9300 was entered as taken and Stocks & Bonds and Warrant account was charged with the same amount, \$9300., and then this note was transferred to another Discount Register, and given a different number when it was transferred. In fact it had two other numbers. When they transferred from one part of the Discount Register to another they sometimes changed the number.

On the 28th of December, 1886 No. 9357 for \$20,300 was paid—marked as paid—and the same amount on that day was charged to the Chemical National Bank of New York, \$20,300. That left \$8,911.02, according to the ledger balance. On June 17th, 1891 a note for \$9300 was marked paid. That would be all of the notes and would leave an overdraft of \$388.98. The notes had been overpaid that amount, but that is merely the ledger account, the way I have it, because I couldn't find anything on the Journal to justify this charge, or addition of \$388.98. Now if this was put on the other side the account would balance. These are all the transactions of paper of Donnell, Lawson & Simpson that I was able to find on the books of the Capital National Bank.

Mr. ROSE: What date were they finally eliminated from the books of the bank?

A. June 17th, 1891.

Q. What would that make the total of Bills Receivable that passed through the bank?

A. \$103,864.06 on the one side, but adding the \$388.98 would make the total \$104,253.04.

Mr. ROSE: What is the significance of totaling that?

A. I simply make the totals to prove my work when I get through.

Q. That has no relevancy to the highest amount that was carried by the bank at any time?

A. The highest amount was \$30,500 at any one time.

Q. Now referring to the charge of \$10,000 to the Chemical National Bank and credit to the account of Donnell, Lawson & Simpson, I will ask you if you have examined the books of the bank under date of May 19th, 1884, to ascertain whether the books themselves indicate that this charge to the Chemical National Bank was the source of the credit to Donnell, Lawson & Simpson?

A. I have.

Q. And does that appear on page 533 of the Journal under date of May 19th, 1884, and on page 358 of the ledger?

564 A. On page 358 of the ledger of the Marsh National Bank, in the account with the Chemical National Bank of New York, under date of May 19th, 1884 was a charge of \$10,000 which was marked "D. L & S", and on the Journal for the same day at page 533 is a charge to Chemical National Bank, marked "D. L & S" \$10,000.

Q. You may state what in your opinion that entry indicates, "D. L. & S"?

A. D. L. & S., I should say refers to Donnell, Lawson & Simpson. On page 532 of the Journal of the same day, May 19th, Donnell, Lawson & Simpson, written out in full, was credited with \$10,000, but the source of the credit is not indicated on the Journal.

Q. Do you find on that same page of the Journal, Page 533 another charge to the Chemical National Bank, marked the same way "D. L. & S"?

A. Yes, sir.

Q. And on the same page of the Journal is there another charge to the Chemical National Bank of \$3,048.88 Marked "D. L. & S"?

A. Yes, sir. And also one of \$2,000 on the next line below.

Q. Now, Mr. Whitmore, I will ask you if in the Ledger of Marsh Brothers, Mosher & Company, there wasn't contained an account known as "Collection Account"?

A. Yes, sir.

Q. What was the amount of that as carried on the Ledger of Marsh Brothers Mosher & Company

565 A. \$14,573.32.

Q. Was that account transferred to the Ledger of the Marsh National Bank?

A. Yes sir, it was.

Q. In what way and for what amount?

A. The same amount.

Q. After it was transferred to the books of the Marsh National Bank, was it also sometimes known as the account of Marsh Brothers Mosher & Company?

A. It was called "Collection Account, Marsh Brothers, Mosher & Co.", is the heading on the first page of the Ledger, and then on subsequent pages it was "Coll. Marsh Brothers, Mosher & Co", two pages, and on the third and fourth page it was "M. B. M & Co. Coll. a/c".

Q. Was that a debit or credit account as it appears on the books, at the time of its transfer?

A. It appeared as a resource of Marsh Brothers Mosher & Company, and also of the Capital National Bank.

566 Q. Of what amount?

A. \$14,573.32.

Q. Were there any changes made in that account subsequent to its transfer to the ledger of the Marsh National Bank?

A. There were no changes made in the ledger account, but it did not appear upon the General Balance Book in the same amount as it appeared upon the ledger.

Q. Explain the discrepancy or difference.

A. It was \$10,000 less on the General Balance Book than it was upon the Ledger, and apparently at the same time the figure "1" was erased, changing it from \$14,573.32 to \$4,573.32.

Q. In what book do those changes appear?

A. In the General Balance book.

Q. The book you have before you in court?

A. Yes, sir.

Q. Now did that throw the General Balance book out of Balance?

A. No the books are not out of balance.

567 Q. What other account then was changed to keep them in balance?

A. Apparently no change made in the nature of an erasure in any account, but the balance of the Omaha National Bank on that day seems to be \$10,000 more than it was transferred at. Page 297 of the Ledger of the Marsh National Bank, the balance transferred was \$2,436.82 and on the General Balance book the balance is \$12,436.82.

Q. You refer to the account of the Omaha National Bank, do you, Mr. Whitmore?

A. Yes, sir.

Q. Does that indicate that \$10,000 was deducted from the Collection Account, so-called, and \$10,000 added in the account of the Omaha National Bank?

A. One account is \$10,000 more than it appears on the Marsh Brothers, Mosher & Co. book and the other is \$10,000 less, and there is an erasure of the figure in the tens of thousands column in the collection account as it appears on the Balance book.

Q. Does the Journal indicate any entries which would justify the decrease in the Collection Account, or the increase in the Omaha National Bank account at the time these changes occurred?

A. It does not.

Q. What would that indicate—would that indicate that there was any legitimate transaction of the bank which would
568 increase the one account and decrease the other in that amount?

A. Well it would indicate that there had been a shifting of the balances?

Q. What do you mean by that?

A. That is that they had changed the amount that they had in the Omaha National Bank and increased that amount, and reduced the amount they had in Collection Account.

Q. But the point I want to get at is this: Where there is nothing upon the Journal showing that anything was sent to the Omaha National Bank, would it indicate that they had actually sent that amount in money, or anything of value?

A. There is nothing on the Journal to indicate any reason for the changes.

Q. You mean there is nothing on the Journal to indicate that the Omaha bank got anything of value?

A. There are no entries at all with reference to this transaction on the Journal.

Q. What would they indicate to an expert bookkeeper as to the justification of those changes?

A. The Ledger balances of those two accounts is different from the balances carried on this General Balance book; this is supposed to be a correct copy of the balances that appear upon the ledger. Now

the balances do not agree. One or the other then is a false balance, and this one shows upon its face that it has been mutilated.

The COURT: It shows a decrease of the Bills Receivable to the extent of \$10,000 and an increase of the credit in the Omaha National Bank of that amount, with nothing in the Journal to justify that entry?

539 A. Yes sir. Not the Bills Receivable account but the Collection Account. It decreases the amount in the Collection Account and increases the amount of their credit in the Omaha National Bank, and there is nothing in the Journal to indicate it.

Q. The fact that the Journal doesn't indicate it,—what would you say whether there was anything to indicate it or justify the increase in the Omaha Bank?

A. I should say there was no transaction at all.

Q. What was that Collection Account so far as you have been able to ascertain from the books?

A. I don't know what that Collection Account is. It is called Collection Account, Marsh Brothers Mosher & Company. It shows an amount of money paid out, apparently, on an investment of the Capital National Bank. Now in a Collection Account there couldn't very well be any investment. In the ordinary account if a bank receive an item for collection it is entered on its books,—its Collection Registers, which are not a part of the books of account of a bank. For that reason if they receive any money on account of that collection they will buy a draft from the bank and remit to their customer, less the exchange, or they will credit it to the account of the customer, and in that case it would be a liability of the bank. It would be a deposit, and I have never found a bank that had an account called a "Collection Account" where they had paid out more money than they had received. Banks don't ordinarily pay out their money on collections until they collect the money.

Q. Could an actual Collection Account be really an asset
570 of the bank, or legitimately overdrawn?

A. It could not, if properly kept. If paper was sent to a bank and they bought it, then it would be paper of the bank, and it would be in some other form.

Mr. ROSE: You don't know what the account was, then as I understand you?

A. No, I don't. I can't conceive what it was.

Q. Mr. Whitmore, was there carried on the books of the Capital National Bank an account known as Bills of Exchange?

A. Yes, sir.

Q. Where does that appear?

A. It appears upon the ledger of the Capital National Bank,—the different ledgers, and also on the Journal at various places.

Q. I will ask you if you made an examination of the books of the Capital National Bank with reference to this account?

A. I have examined it, yes, sir.

Q. Have you examined it particularly with reference to an entry on December 14th, 1885?

A. Yes, sir.

Q. Was there a charge to that account on that day?

A. There was charged to that account on December 14th, 1885 an amount \$29,938, Journal B pages 204 and 5 are the day's transactions.

Q. And are you able to ascertain by an examination of the Bills Receivable that day what items entered into that amount?

A. Well I find on that day a number of notes of the Marsh Harvester Company were marked paid and Bills Receivable account credited with the amount; the aggregate shows \$29,938 of Bills Receivable paid, and the same amount charged to Bills of Exchange on that day.

Q. That is, the Bills Receivable account is decreased and Bills of Exchange increased that amount?

A. Decreased and increased, yes, sir.

Q. Now what items comprise this item of \$29,968 of Bills Receivable,—that is, have you investigated to determine that by an examination of the books?

O. And are the books from which you ascertained that here in court?

A. Yes, sir.

Mr. ROSE: What do you mean by here in court?

A. They're here in the court room.

A. No. 10418 Marsh Binder Company.....	\$4,668.
10431 Marsh Binder Company.....	5,000.
10475 ".....	2,500.
10502 ".....	2,500.
10511 ".....	5,000.
10519 C. W. & W. W. Marsh.....	3,600.
10525 Sycamore Marsh Harvester Company....	2,000.
10529 Marsh	2,500.
Total	\$29,968.

Q. Now you may tell the court what the nature of the Bills of Exchange account is, if you can determine from the books.

572 A. I don't know what it was. It might have been what is called an "Items in Transit" account that some banks keep, where they receive checks upon banks, country banks for instance with which they have no regular account, and they have no correspondent to whom they can send that item and receive credit directly, so they send it direct to the bank on which it is drawn; they take it as a cash item, enter it on their books and have a register for that purpose, and then it goes into the total of what they call their "Items in Transit," and when they get returns from that item, they enter it in this account as a payment on that particular item. Now some small banks carry such items as cash items, that is, they put a ticket in the cash drawer and carry that ticket until the returns come for the payment of the item, but in the larger banks they have an account that they call "Items in Transit" or

"Transit Account" or some similar name, but I never found one that was called a Bills of Exchange account.

Q. Does this so-called Bills of Exchange account appear to be of the nature which you have indicated, that is, would you say from the items that are charged there that it was such an account,—the size of the items?

A. Well from some of the entries in the account it looks like an account of items that they have taken as I have suggested, because there are entries in it every day, both debit and credit entries, and usually in varied amounts, small amounts and odd amounts. Sometimes there were several items put in together—small amounts, that would indicate that it was an account intended to keep these cash items in, but in this case of \$29,968 of Bills Receivable paid, and then the same amount is charged up to Bills of Exchange, knowing what I know about the Marsh Harvester Company, why I would say it was used to conceal transactions in part; it may have

— part legitimate but part of it was for the purpose of concealing things that they didn't care to have shown.

Mr. ROSE:

— It would not eliminate any of the assets?

A. No, sir.

Q. You say Bills of Exchange account was charged with \$29,968 in one sum?

A. Yes, sir.

Q. And that would indicate that it was not used to indicate items in transit as you have explained?

A. Well it might indicate items in transit, even if they had one large amount.

Q. But that is not likely?

A. Oh, they usually have a Register in which they enter each of those items.

Q. Did you find that this Bills of Exchange account is later credited with this identical amount?

A. Now on July 20th, 1886, Journal "B," pages 636-7 I find Bills Receivable taken, a total that day on the Journal of \$46,853.56, and among them were notes as follows:

No. 19947, First National Bank, Hastings.....	\$10,000.
20613, First National, Kearney.....	10,000.
18578, F. S. Johnson & Co.....	9,968.

These three notes aggregate \$29,968.00 and Bills of Exchange is credited on that day with \$19,968, and on July 29th, with \$10,000, which brings back the same total of credit to the Bills of Exchange account as was charged on December 14th, 1885.

* * * * *

576 Q. Are the books to which you refer in court at this time?

A. Yes, sir.

A. The First National Bank of Hastings, the note appears on the Register as The First National Bank of Hastings. The First Na-

tional Bank of Kearney the note appears on the Register as the First National Bank of Kearney, and the F. S. Johnson & Company note appears as F. S. Johnson & Company on Bills Receivable Register "B." Now on the payment of these notes, Journal "B," page 756, on the 11th line from the top, shows No. 18,578, part, \$2,000, and on that line between the number and the amount the words "Syc. M. H. Co., was written in in lead pencil. The name of the maker of that note is not otherwise designated on the Journal of payment. That was the F. S. Johnson & Company note.

Mr. ROSE: Is that Journal here?

A. Yes sir.

Mr. ROSE: At what page?

A. 756, Journal "B."

A. (continued. Now on page 770 of Journal "B," the same number 18578, \$7,768.00 and in lead pencil between the number and the amount is "Syc. M. H. Co." Now on page 772 of the same Journal, "B," the fifth line from the top appears No. 18578, \$200.00, and in ink the word "Johnson" followed by "Syc. M. H. Co." That pays up all of number 18578 F. S. Johnson & Company. Now on Journal "C" page 126, No. 19947 is paid; that is marked "Hastings First National, \$10,000. On page 180 of Journal "C" fifth line from the top is 20613, \$2,500, "pt" in ink before, and Marsh is in ink with a line drawn through it and the word Kearney written in ink following it. So that the entries on page 180 Journal "C" fifth line from the top "20613 Marsh 577-587 Kearney, Pt \$2,500.00" and on page 202 15th line from the top, "20613 Marsh \$7,500." are the same numbers.

This number 20613 was entered on the Bills Discount book as First National Bank of Kearney.

Q. And in the Journal in that name?

A. I- don't show in the Journal when it was taken.

Q. Did you examine the Bills Receivable blotter?

A. We have no blotter for that time, and the names don't appear on the blotter.

Q. That is, they don't appear on the Journal?

A. They don't appear on the Journal, nor on the blotter.

Q. Now did you examine the books of the bank to ascertain if at the time the notes appear to have gone into the bank, as shown by the books, or when they appear to have been paid whether there was any interest received for them, or paid by the maker, or received by the bank?

A. I have examined the book I have here, their "Interest Received" book for July 20th, 1886.

Q. I will ask the reporter to identify that book as Exhibit X-29.

(Book so identified.)

Q. Is that date, July 20th, 1886, the date that the books of the bank shows these several notes were taken in that bank and made a part of its assets?

A. It is.

Q. What do the books indicate as to whether or not any interest was received on account of those notes?

A. No entry of any interest having been received on account of either of those three notes.

* * * * *

588 H. J. WHITMORE re-called.

Direct examination (continued).

By Mr. THOMAS:

Q. Mr. Whitmore, in the books of the Capital National Bank was there kept what was known as an "Interest Paid" account?

A. They had an account that was called "Interest Paid" account.

Q. Are you able to tell from an examination of the books what sort of an account that was; what items it contained,—what is the purpose of such an account, what function has it?

A. Well it is keeping a record of the item of interest paid by the bank upon certificates of deposit, and perhaps to depositors who received interest on open deposits—generally all items of interest or discount paid by the bank.

Q. And that shows on the books of the bank how,—as a debt or credit entry?

A. That would be a resource.

Q. As a debit account?

A. Yes, sir.

Q. And did the Capital National Bank and Marsh National Bank keep such an account on their books?

A. Yes, sir.

Q. Now what is done with that account at the end of the year, the annual periods when dividends are declared?

Mr. ROSE: Defendants severally object as no foundation laid, and incompetent, Objection overruled. Each of the defendants excepts.

A. It's customary with banks to throw that into the earnings account, or undivided profit account; they accumulate or gather together, in practice, the earnings of the bank, and then the expenses of the bank are charged against that account. And, then the balance or difference, if there is any, in the account is carried along as the earnings account, or undivided profit and it may be

589 disposed of by the payment of dividends and a portion carried to surplus, or used to charge off items of loss if there are any.

Q. Is the "interest paid" account, so-called, an expense account?

A. It is considered an expense account.

Q. Classed with wages and other expenses,—

A. The same as salaries, wages and rent and insurance and stationery and postage, and so forth.

Q. And at the end of the dividend declaring period this account,

as an expense account is charged against the earnings, or undivided profits accounts.

A. That is the way banks usually treat it. Sometimes they throw the expense and earnings into what is called an "Undivided Profits account," and sometimes it is used simply to,—simply the expenses are charged against the earnings. The earnings are, from day to day, thrown into one account; they simply carry what they call an earnings, or undivided profits account, and all their earnings are accumulated in one account in some banks.

Q. How was it done in this bank?

A. In this bank they kept separate accounts of the different expenses, as salaries, or wages, or interest paid, and then an account of earnings, of interest received, and they seem to have disposed of a portion of this account by throwing it into an undivided profit account at certain periods.

Q. What periods?

590 A. They seem to have done it about every six months.

Q. At the dividend declaring periods?

A. Well of course they seem to have declared dividends about the time they did this. Banks may have different periods for declaring dividends; they might not always use the calendar year; that is they might not declare the first of January or the first of July; some banks have other periods that they use; it depends sometimes upon when a bank began business.

Q. Mr. Whitmore, you have made an examination of a part of the books, I think you stated, and documents here in Mr. Jones' possession,—are those the books and documents here in Mr. Jones' possession, to which he has just testified?

A. Yes, sir.

Q. Now did this bank, the Capital National Bank or the Marsh National Bank keep what is known as an interest paid account?

A. It did.

Q. I will ask you if you found in your examination of the books of the bank any credits to the "Interest Paid" account?

A. It did.

Q. Were there any credits to that account which were not charged against the undivided profit account, or the earnings or any similar account, as it should be if the account had been properly charged off?

591 Q. I found a good many credits to the interest paid account which were not charged to the undivided profits account.

Q. Or any similar account?

A. Yes sir.

Q. Now what is the effect of a credit to the interest paid account Mr. Whitmore?

A. Well the effect of a credit to an interest paid account is to reduce the amount of interest paid, apparently, or to reduce the amount of that item, or the expenses of the bank, unless it is the closing entry which throws the account into the undivided profit account.

Q. How does a credit to the interest paid account affect the apparent net profits?

A. If the interest paid account is reduced any amount improperly, then of course the amount to be charged to the undivided profit account or earnings account would be reduced and that would increase the apparent profits of the business.

592 Q. Now you may state giving the amounts and dates, and the books where found, of any credits you have found to this "Interest Paid" account that were not apparently charged off or against the undivided profits or any similar account.

A. December 29, 1884, \$813. April 14, 1888, \$2,500.00. June 9, 1888, \$1,500.00. November 16, 1888, \$2,500.00. June 28, 1889, \$10,000.00. September 30, \$7,000. March 19, 1890, \$5,000.00. May 16, 1890, \$1,500.00. May 19, 1890, \$2,000. May 21, 1890, \$1,500. June 3, 1890, \$2,500. September 25, 1890, \$5,000. December 27, 1890, \$10,000. April 9, 1891, \$800. May 2, 1891, \$7,200. June 20, 1891, \$10,000. September 25, 1891, \$14,000. January 2, 1892, \$2,103. May 4, 1892, \$5,000.

Q. Have you totaled it?

A. The total is \$90,916.44.

Q. In any case were any of those items to which you have just testified charged against the undivided profits account, or any similar account?

593 A. I have not discovered that any of these items I have named have been charged against the Undivided Profit or any similar account.

Q. Or in any way deducted from the gross earnings of the bank?

A. They have not been deducted that I can discover from the gross earnings of the bank.

Q. From where do you get this information, from an examination of what books?

A. Examinations of the ledgers, and all of the Journals that I could find. One period, September 30th, 1889, and March 19, 1890, and also June 28, 1889—the Journals for that period are not here, and has never been in my possession. I have been unable to find that and was unable to find it when I first examined the books. I presume there was a Journal. The ledgers refer to journal pages, but the letters,—the journals as lettered here appear to be regular, A, B, C, D, E, F and G, but there seems to have been a Journal between D and E. It ought to have been lettered, but what it was, or whether there was such a journal I am unable to state, except that the books indicate that there was such a journal.

Q. But as to these three items you gathered your information from the ledgers?

A. Yes, sir.

The COURT: In your opinion what disposition was made of the item of \$90,000 of interest paid, or in what manner was it accounted for by the officers of the bank?

594 A. Well as to that I am unable to state, except in a number of instances,—most of the instances where these amounts were credited to the Interest Paid account, I find a similar

amount charged the same day to some other account, as for instance, June 28th, 1889,—\$10,000. Now that same amount is charged to Stocks & Bonds on that day, and the amount of \$7,000 on September 30th, that amount is charged to Real Estate on that day, and then there is some of these amounts there that are charged to the Chemical National Bank, and then the amount of \$2,500 on June 3rd, 1890, the same amount seems to have been charged to real estate.

The COURT: Would that indicate Stocks & Bonds, or Real estate purchased, or a deposit to the Chemical National on that date?

A. It would indicate that they had bought Real Estate, or bought Stocks & Bonds, or had remitted to the Chemical National Bank these various amounts; that is, the entry in these several accounts would indicate that charged to the accounts.

Q. Now Mr. Whitmore, as a matter of fact could an item of \$10,000 of interest paid be legitimately exchanged for real estate or Stocks & Bonds or anything else?

A. I think that is self evident that they couldn't use expenses to make investments with.

Q. In your opinion as an expert, Mr. Whitmore, and from your examination of the books, do you believe and is it your opinion that these credits to the Interest Paid account were honestly made, or that anything of value went into the bank in their place?

A. My judgment is that these credits were not properly made.

By the COURT:

Q. Do the books show real estate purchased that day, or Stocks and Bonds purchased that day, or a remittance to the Chemical National Bank to account for those sums?

595

A. It is not possible for anyone to tell whether Real

Estate was really bought to this amount or not; there is simply an entry of so much charged against the real estate account. Now the figures are there in that amount, but they did not itemize on the Journal and they did not itemize on the Ledger; it is simply a real estate debit of that amount. Now if they had on their ledger or journal put down a description of the real estate bought that day then it might have been traced. I might say for the information of the court, that the ledger account with the Chemical National Bank on May 16th has apparently been reconciled by someone, and I notice a number of items are marked "T out" in pencil apparently on both sides of the item. The 13th of May, 1900, \$1,500 is one of the items that is marked in that way, and also—

Q. Have you made an examination of any of the Certificates of Deposit that were issued by the bank and compared them with the books of the bank with reference particularly to the certificates that were shown on the books to have been, but where the certificates themselves as filed with the Receiver shows them to be outstanding and unpaid and a liability of the bank at the time of its failure?

A. I have.

* * * * *

596-599 Q. Well now have you found any certificates outstanding, as I say, that were shown paid on the books of the bank?

A. I found a number of certificates that were marked paid on the certificate register.

Q. Have you a list of those giving the number and the amounts, and so forth?

A. Yes, sir.

Q. Those that were unpaid and outstanding at the failure of the bank?

* * * * *

600 By Mr. THOMAS:

Q. Now you may give the list I asked for.

A. The list of certificates for which Receiver's Certificates were issued and which were marked "Paid" on the Certificate Register are:

17458, January 9, 1888 Effie B. Mosher, \$210. Marked Paid June 6 '89.

17987, May 1st, '88, E. J. Randall, \$1,700. May 2nd, 1888.

Mr. NORVAL: That is the date paid.

A. Yes sir, marked "Paid".

20292, June 19, '89 S. J. Gardner, \$6,000. marked Paid Sept. 26 '89.

23922, Fe-. 2, '91, Thomas Farrell, \$1,015., marked paid Feb. 21, '91.

24541, May 9, '91 Lydia Greenman, \$371.66,—May 19, 1891.

Mr. NORVAL: Marked paid.

A. Yes, the last date is the date marked paid.

24590, May 16, '91 E. Hellen, \$641.60, Aug. 22, '91.

24852, July 6, '91, N. Johnson, \$1,300,—Aug. 3, '91.

24977, July 25, '91, Jno. A. Peterson, \$250., July 30, '91.

25003, July 29, '91, Lydia Greenman, \$230. March 31. I think there is no year given to that one.

25033 Aug. 10, '91 Thomas Farrell, \$1,032.12, Sept. 14, '91.

25129, Aug. 22, '91 James T. Hibbs, \$200, Sept. 14, '91.

25130 Aug. 22, '91 James T. Hibbs, \$250, Sept. 21, '91.

25324 Sept. 24" '91 ——— \$2,423.97, Sept. 28, '91.

And then the Certificate Register is missing from that time on.

In the next book: No. 26142 Fe-. 4, '92 \$300, Mar. 3" '92.
601 Q. The Certificate of Deposit Register after that date, you say you haven't found?

A. Well the next succeeding one apparently is gone.

Q. Just give us the total of that last schedule.

A. I foot it \$15,954.35.

Q. Did you make an examination of the accounts with the several different depositors of the bank, on open account?

A. Yes, sir.

Q. How were those accounts kept in a general way?

A. They were kept on what is known among bankers as the Boston Daily Balance book.

Q. I should have asked you, instead of that, with reference to the account of Certificates of Deposit, instead of open accounts.

A. Well the Certificate of Deposit account is kept in the—the general debit and credit account is kept in the Individual Deposit Ledger of the bank, No. 2.

Q. How many such accounts had they on the books when the bank failed?

A. I think there were three accounts.

Q. How were they designated?

A. Numbers 1, 3 and 4. (1, 3 and 4).

Q. Please state to the court the condition of those accounts at the time the bank closed, January 21, 1893?

A. Account No. 4 showed outstanding certificates to the amount of \$97,301.27. The account No. 1 showed a red ink balance of \$508.11,—What would be called an overdraft. Account No. 3 showed a red ink balance of \$10,527.45, or an overdraft.

602 Q. When a deposit is made in the bank, Mr. Whitmore, and a certificate of deposit is issued for that deposit, how is that shown on the books in these various accounts,—does it show as a credit?

A. They showed each certificate, or apparently the practice was to show each certificate by the amount as a separate item of credit, or deposit in this individual deposit book in the certificate account, and then when certificates were paid they were treated the same as a check by a depositor and charged to this account.

Q. The amount of the certificates outstanding would be a credit to this particular account would they?

A. Yes, sir.

Q. And could a certificate of deposit account, properly and honestly kept, be overdrawn?

A. No sir.

Q. Why not?

A. Because the certificates are paid as they are presented and they are cancelled. When a certificate is issued the account then is credited with the amount of that particular certificate. Now, if a bank had issued \$50,000 of certificates up to a certain time, and had paid none of those certificates, then they would show a credit balance there of \$50,000. Now if a certificate,—one of these certificates came in to be paid,—the bank stopped issuing certificates we will say—and these certificates came in to be paid, and paid as presented they would be charged as a check against this account and the balance would be reduced from time to time until all of the certificates were paid, and then the account would be as I say, balanced out, the debit entries would equal the credit entries and there would be nothing due.

Q. And it couldn't be overdrawn.

603 A. Not if properly kept. The books showed, Mr. Thomas, \$97,301.27 of certificates outstanding, but if you deduct the amount of the red ink balances in the other two accounts from the credit balance, then you would have left \$86,265.70.

Q. And that is the manner in which they did keep that account;

they deducted the overdrafts from the credits in carrying to their General Balance Books?

A. In making up the total of deposits for their General Balance Books, the overdrafts were always deducted from the amount of the credit balances, because in their General Balances they never showed the overdrafts as part of their assets, but they indicated the overdrafts at the bottom of the page in red ink entry. Of course the individual deposit overdrafts are a resource.

Q. But the result of that would be to understate the liability on account of the certificates outstanding, wouldn't it?

A. Yes, it would reduce the amount, because, as I say, these certificate accounts couldn't properly be overdrawn.

Q. Then if Certificate account No. 4 had \$97,000 outstanding and they deducted from that overdrafts and reduced it to \$86,000 that would be showing \$11,000 less than that particular account showed.

A. Yes, sir.

Q. And if there were actually \$97,000 in certificates outstanding in this account, then if it were carried to the General Balance book at \$86,000 that would be \$11,000 less than the certificates of deposit outstanding.

A. Yes sir, if it were carried in that way.

Q. Well isn't that the way it was carried?

A. No sir.

Q. How was it carried?

A. They carried individual deposits and certificates of deposit as one item.

604 A. (continued). All the overdrafts, individual and certificate overdrafts were lumped together and deducted from the total of the credit balances—individual as well as certificates.

Q. And the balance was carried forward to the General Balance book?

A. Certainly, but there was no separation on the General Balance book of the individual deposits from the certificates of deposits.

Q. Then the general balance book understated the certificate accounts to the extent of the overdrafts?

A. The effect of it would be to understate the amount of their liabilities.

Mr. ROSE: But it wouldn't specify liabilities or certificates of deposit?

A. No.

Q. It is not specified on the General Balance book at all is it?

A. No sir.

Q. To get at it you would have to go to the Individual deposit ledger?

A. Yes sir, I have stated that.

Q. Did you examine the Balance book containing the Certificate of Deposit account with reference to January 6th, 1893?

A. Yes, sir.

Q. And also the Certificate Register in connection with it?

A. The Register that was in use at that time, yes sir.

Q. Now what do the books show as the certificates of deposit outstanding on account of the certificate of deposit account No. 4, on January 6th, 1893?

605 A. On the morning of January 6th, the certificates outstanding, as shown by the books amounted to \$15,231.58.

Q. Were any certificates paid on this day, and charged to this account, No. 4?

A. Yes, sir.

Q. And were any certificates paid that day that had been issued at a prior date?

A. Yes, sir.

Q. Now you may state what certificates were paid that day, as shown by this account, giving the number of the certificates and the amount.

Q. The items that were marked paid in the account itself were \$315, \$200, \$150, \$100, \$6,000, and two items of \$50,000 each.

Q. Making a total of how much?

A. \$106,765.00. I found by examining the certificate register that two certificates that were issued that day had been marked paid the same day on the register. The amounts agreed with the amounts that were entered in the ledger account and I therefore assume that those two certificates were paid the same day they were issued, because of the fact that they were marked paid on the certificate register as of that day, and the fact that the same amounts appear in the account itself. Now the other certificate numbers—I will give the numbers of those certificates—No. 28458 for \$315.00 was issued a day or two prior to that time. The Certificate register—if Mr. Jones will get it—that last Certificate register—and No. 28455, for \$200.00—those were issued just a day or two prior to this time, and the certificate register showed that they were entered as paid that day. No. 28470, \$150.00 and 28439 for \$100.00 were issued on the 6th. No. 28464 for \$6,000 was issued the day before I think, and marked paid on the 6th. Then I looked for certificates of
606 the amount of \$50,000 that were paid on this day and I found a schedule that I had made before and checked over that numbers 21379 for \$50,000 was paid—stamped paid on that day, and number 25097 for \$50,000 was also stamped paid on that day. Those two certificates are here in court.

Q. Now I will ask you if Exhibit No. A-146 is one of those certificates, No. 21379?

A. Yes sir, Exhibit X-146 is number 21379.

Q. And is Exhibit X-145?

A. Another of those certificates, No. 25097.

Q. Now did you examine into the history of those two certificates No. X-145 and A-146 to ascertain when those were issued by the bank?

A. Yes, sir.

— Now when was Exhibit X-145, No. 25097 issued by the bank?

A. August 17th, 1891.

Q. For what amount?

A. The certificate shows on its face \$50,000.

Q. And did you examine the Certificate of Deposit Register for this particular certificate to ascertain for what amount it was indicated on the Register?

A. Yes, sir.

Q. For what amount does the register show it to have been issued?

A. \$50.00.

Q. Is that shown on the book here, that is now in court, and shown to the court?

A. Yes, sir.

Mr. THOMAS: We offer this book for the inspection of the court showing the entry just testified to by the witness, and showing the record of the certificate as having been issued for \$50.00.

Q. Is that contained in the book identified by the reporter as Exhibit X-33?

A. Yes, sir.

Q. Now did you examine the other books of the bank, that is the books other than the Certificate of deposit register, to ascertain for what amount that certificate entered the bank's liabilities; in other words, how it was entered in the ledger of the bank, and for what amount?

A. Yes sir.

Q. Now you may state for what amount the other books of the bank, the journal and deposit ledger, show this to have been entered on the books.

A. It went into the ledger account as \$50.00.

Q. And was paid in what amount when it was paid?

Mr. ROSE: What ledger shows that?

A. That would be the Individual Deposit ledger of August 17th, 1891.

Q. Does it give the number of the certificate?

A. No sir.

Q. And for what amount was that certificate paid on January 6th, 1893?

A. \$50.00 in the ledger account.

Q. Now have you made a similar investigation as to certificate No. 21379, Exhibit X-146?

A. Yes, sir.

Q. What does the Certificate of Deposit Register show the amount for which this particular certificate was issued?

A. I think that is on the certificate register for \$100, and it was on the Ledger as \$5.00.

608 Q. And is that shown on Exhibit X-33, just now in court?

A. Yes, sir.

Mr. ROSE: What does the stub show?

A. The stub shows \$50,000.

Q. The ledger shows that that entered the books of the bank for \$5.00?

A. Yes sir.

Mr. ROSE: But you find no item by that number?

A. The only way is to take the certificates issued on a certain day and then compare the amounts and then see if they show paid. When they are paid they don't come in the order they are issued; you can check the amounts very easily when they are issued. The certificates as paid are certificates that have been issued at perhaps a dozen different dates, and they are perhaps paid on the same day, and this of course it is difficult to trace. But the issuance of the certificates you can trace.

Q. Mr. Whitmore, did you make an examination of the other certificate accounts that were carried on the books of the bank?

A. Yes, sir.

Q. What other ones, did you examine Certificate account No. 1?

A. And also No. 3.

Q. Now what did you find as to the condition of the Certificate of deposit account No. 1?

A. On the 17th of January, 1893 there was an overdraft of \$108.11; on that day there were paid four certificates of \$100, each, which made an overdraft of \$508.11, and that remained there, I think, until the bank closed.

Q. And did you examine Certificate of deposit account No. 3?

A. Yes, sir.

Q. Tell us what condition you found that in.

A. On January 16th, 1893, this account showed unpaid certificates in the amount of \$4,978.19; there were paid four certificates, one of \$9,000, and one of \$100, and one of \$100, and another one of \$50.00, making \$9,250, that were paid.

Q. That made \$4,271.81 paid more than the account showed outstanding?

A. That made an overdraft in the evening of \$4,271.81. Now after January 16th there were no certificates entered as issued in account No. 3. On the 17th they paid certificates to the amount of \$1,750.65; on the 18th \$370; on the 19th \$795; on the 20th \$990; on the 21st \$2,350, and when the bank closed the account was overdrawn \$10,527.46.

Q. Now have you examined the certificate of deposit accounts at an earlier date to ascertain if those accounts were overdrawn at other times?

A. Yes sir, in a general way. Overdrafts appear in different ones of these accounts from time to time from, I think, 1888 on down until they closed the bank, in different amounts and at different times, and different accounts. I wouldn't attempt to state particularly when nor the amounts, because I didn't attempt to charge my memory with it, or make any record of it.

Q. In speaking of the different accounts, you mean the different subdivisions of the certificate of deposit account?

A. Accounts Numbers 1, 3 and 4.

Q. And you say from sometime in 1888 some of those accounts were overdrawn nearly all the time?

A. I think from sometime in 1888, down to the close of the bank

there was an overdraft shown in the certificate of deposit account all the time.

Q. Have you examined the books and made sort of a schedule of some of the overdrafts that you found?

A. No, I haven't.

Q. Mr. Whitmore, have you made an examination of the
610 books of the bank to ascertain what amounts were paid out in dividends from the time of its organization until it failed—that is including both the Capital National and the Marsh National?

A. Yes sir.

Q. And from what books did you get that information?

A. From the journals and ledgers of the Capital National Bank.

Q. Those are contained in the books to which you have referred before, and the books are here in court?

A. Yes, sir.

Q. Now have you prepared a list or schedule giving the amount of the dividends that were paid out, and the dates when paid as shown by the books?

A. Yes, sir. Not exactly the date when paid, but the date when it was charged up really, because sometimes the stockholders might not get the dividends on the day that they were declared or marked as charged up.

Q. The dates you have are the dates when it was charged?

A. When the aggregate sum is charged on the ledger as having been set apart as a dividend.

Q. You may give the dates and the amounts.

A. January 12th, 1885.....	\$15,000.
July 3, 1885.....	13,000.
December 31, 1885.....	16,000.
July 13, 1886.....	14,000.
December 31, 1886.....	18,000.
July 1, 1887.....	18,000.
January 3, 1888.....	18,000.
July 11, 1888.....	18,000.
January 6, 1889.....	18,000.
July 9, 1889.....	18,000.
January 14th, 1890.....	15,000.
July 9th, 1890.....	15,000.
January 15th, 1891.....	15,000.
July 17th, 1891.....	13,750.
January 12, 1892.....	15,000.
July 12th, 1892.....	12,000.

Total..... \$251,750.00

611 Q. I will ask you if you have examined the books of the bank to ascertain its condition, that is, its assets and liabilities as shown by the books at the date of its failure?

A. Yes, sir.

Q. Are you able to state what the assets and liabilities of that bank

were, as shown by these books, on January 21, 1893 or January 23rd, 1893?

A. I have a schedule of the assets and liabilities of the bank, eliminating the expense account, just getting down to what the actual assets of value were, the accounts of value in the bank, and the liabilities, including the capital stock.

Q. And taken from the books that are here in court now?

A. Yes, sir.

Q. You may state the result of that examination.

Mr. ROSE: When you speak of assets of value are you judging which notes are good and which are bad?

A. No sir. In making up a statement of the assets of the bank, the bank makes a statement for publication and it eliminates the expense account.

Q. I just wanted to know what the scope of your inquiry was.

A. Yes sir.

Q. So you took the assets shown by the book?

A. Yes sir.

Q. Didn't put your own judgment in anywhere.

A. No sir.

Mr. ROSE: Defendants severally renew the objection.

Objection overruled.

Each of the defendants excepts.

612 A. Of course I have no way of telling what these accounts consist of. For instance, Stocks & Bonds, \$325.00 is the book value.

Furniture and fixtures.....	5,770.
Bills Receivable	851,880.07
Excess bonds	5,000.00
Cash and Cash items,—That would be simply the cash balance, as shown on the Journal	28,731.79
Bills of Exchange	4,997.97
Overdrafts, Individual Balance Ledger No. 1	5,225.21
Overdrafts, Individual Balance Ledger No. 2	17,069.95
Certificate of Deposit a/c No. 1.....	508.
Certificate of Deposit a/c No. 3.....	10,527.46
Country Bank overdrafts.....	177.41
General overdrafts	33,508.14
Real Estate	112,533.16
Banks on General Ledger.....	15,219.75

Making a total of..... 1,057,965.18

The Liabilities:

Capital stock.....	300,000.00	
Due to Banks, Commercial Nat'l....	37,196.99	
American Exc. Nat'l..	2,288.23	(2,228.23)
Merchants Nat'l	250.11	
Clearing House	965.95	
Total.....	40,641.28	
Individual Deposits, Ledger 1.....	168,971.84	
Ledger 2.....	231,468.72	
Country Banks, due to.....	143,210.31	
Certificates of Deposit, Balances.....	97,301.27	in No. 4.
Making total deposits.....	640,952.14	
Bills Receivable sold,—I would call them rediscounts,—not sold abso- lutely	68,694.72	

Making a total liability of..... 1,050,288.14

613 Q. That one item of liability you said Certificates of Deposit \$97,301.27, that was what was supposed to be outstanding?

A. That was account No. 4 showed that amount outstanding.

Q. The other accounts were overdrawn?

A. Yes, sir.

(Adjournment taken until tomorrow morning, Feb. 3, 1911, at 9 a. m.)

(Feb. 3, 1911, 9 a. m. Direct Examination of witness Whitmore continued.)

Q. Mr. Whitmore, have you made an examination of the books with reference to a credit to the Nebraska Relief Fund, which is referred to in the deposition of Mr. Ludden?

A. I examined the account on the books of the Capital National Bank.

Q. And do the books of the Capital National Bank show a credit to the Relief fund?

A. They show a credit, or a deposit, to the Relief fund.

Q. Under what date?

A. Under date of April 25, 1891.

Q. In what amount?

A. \$100,250.00.

Q. Did you follow out that account to see whether it had been checked out and withdrawn from the bank?

A. Yes, sir.

Q. How was that, an open account or certificate?

A. It was what they call an open or individual deposit account.

Q. How was it withdrawn in large or small amounts?

614 A. In various amounts, from time to time,—almost daily in fact; there was an overdraft when this deposit was made,—the account apparently had been opened as an overdraft, and checks were charged to it from time to time for some days, and then this deposit was made, and then there were checks apparently in the ordinary course of business until the account was practically wiped out at the time of the failure of the bank.

Q. On that same day, that is April 25, 1891 do the books show a certificate of deposit issued?

A. Yes, sir.

Q. What books did you examine in that regard?

A. The certificate register, and the ledger account of the certificates.

Q. What does it show as to the certificate issued?

A. Well it shows several certificates issued.

Q. Does it show a certificate for the sum of \$100,250.00?

A. Yes, sir.

Q. Does the certificate of deposit account show a certificate of \$100,250.00 issued?

A. Yes sir, No. 24452.

Q. Is the certificate, Exhibit X-140, shown to you the one?

A. That bears the number and is the amount, and corresponds with the certificate register in all respects as the certificate shown on the register that day.

Q. Now did you examine the books further to ascertain what became of this certificate of deposit for \$100,250.00, that is, what disposition was made of it?

A. Yes, sir.

Q. You may state what disposition was made, as shown by the books.

615 A. This certificate, No. 24452 is marked paid and enters into the ledger account of certificates on April 28th, 1891 for \$100,250.00; paid that day.

Q. Trace the history of it clear through, as far as you can, and show what entries appear on the books contemporaneous with that, and what credits were given to other accounts.

A. On the day that this certificate was paid and certificate, No. 24473, in the name of C. W. Mosher for \$75,000.00 was issued. The account of C. W. Mosher was credited with \$10,000, and an individual deposit account called the Prison Contract was credited with \$15,000, which made a total of \$100,000. On April 30th, 1891, a certificate, No. 24473 for \$75,000 was marked cancelled and paid, and certificate No. 24481 to C. W. Mosher for \$62,500 was issued. An account on the books in the name of Mosher & Outcalt, deposit account, was credited with \$2,500 and the account of R. C. Outcalt, Treasurer, was credited with \$10,000, making a total of \$75,000. On May 2, 1891, Certificate No. 24481 for \$62,500 was marked cancelled and paid and a new certificate, No. 24496 to C. W. Mosher for \$52,500 was issued. An account on the General Ledger and on the General Balance book known as Walsh & Putnam, Journal E, page

dollars cash. Now the teller counts his cash and he might only have \$25,000- cash.

* * * * *

624 Q. Have you examined the books with reference to the credit to the open account of J. E. Hill, State Treasurer?

A. I have examined the account of J. E. Hill, treasurer and also the State Treasurer account.

Q. For what period?

A. Well I examined the account at different times from '89 down to the close of the bank.

Q. And at what time in 1889 did it begin?

625 A. December 23rd, 1889.

Q. What do you find,—what entry do you find in the account on that day?

A. I find that on December 23rd, 1889, the account on the books in the name of J. E. Hill, treasurer was closed, that was in Individual Deposit Ledger No. 1, and a new account was opened in the name of State Treasurer, called State Treasurer account—Individual Deposit Ledger No. 2, and the balance in the J. E. Hill, Treasurer account appears as a deposit in the State Treasurer account.

Q. In what amount?

A. \$23,328.75, closing one account and opening the other account with the same amount. And on the 24th of December, there appears to have been a deposit of \$100,000 made to the account of State Treasurer.

Q. Did that \$100,000 enter into that account?

A. Yes, sir, it was entered into the footing on computation of the balance that was carried forward that day.

Q. Did you follow that account on out from that time, December 24th, 1889, up to the close of the bank to see whether or not it had been checked upon from day to day?

A. Yes, sir, the account is checked upon from day to day apparently in the usual course of business for sometime; I don't know whether it run until the close of the bank or not.

Q. Well it was ultimately checked out, I suppose, in the settlement with the succeeding treasurer?

A. I presume it was.

Q. The point I want to bring out is was the account after this deposit was made checked out from day to day in the usual course of business?

A. I have already stated it was apparently checked upon, and deposits made from time to time.

626 Q. Now you may state when this \$100,000 deposit was made in the State Treasurer account would that amount appear as a liability on the General Balance book of the bank, and was it shown as a liability of the General Balance book?

A. It was shown as a liability upon the Individual Deposit Ledger, No. 2.

Q. That is opposite the name State Treasurer?

A. Yes, sir, opposite the name State Treasurer.

Q. How did it appear on the other books of the bank?

A. Well it would not appear. Of course in the General Balance book or the ledger it would not appear as a separate item; there would be no way of identifying it.

Q. They simply carried the balances.

A. They simply carried the total; they had three Individual Deposit ledgers No. 1 and No. 2 of individual depositors,—check depositors and the certificate account, and another one in which they carried the deposits of banks that kept deposits there.

Q. This account of the State Treasurer, that appeared in what you call Individual Deposit book No. 2.

A. Yes, sir.

Q. And did you foot up the amounts of deposits in this book number 2 to ascertain whether the footings were correctly transferred to the other books of the bank, the General Balance book of the bank, which contains its resources and liabilities?

A. Yes, sir.

Q. You may state the result of that examination.

627 A. I will state that the total footings as shown on these three books are carried into the General Balance book as the total of deposit liabilities of the bank each day, and of course in order to get at the total liabilities they had to take the aggregate footings of the three books. During the week beginning April 28, 1902, I footed the balance of the Individual balance books of the Capital National Bank, for the 23rd, 24th and 26th days of December, 1889, and then I took the totals as shown by my footings and compared them with the totals shown by the General Balance book. I found the totals of the several pages of these three books, less the total amount of overdrafts shown on the three books to agree within forty cents of the amount shown on the General Balance book for the 23rd day of December, 1889. But the totals as shown on the 24th and 26th days of December, 1889, was in round numbers \$100,000 less,—or more than the General Balance book showed.

Q. Which do you mean, the total of the Individual Balance book was?

A. The aggregate totals of all the balances shown on the three Individual balance books, less the overdrafts lacked forty cents of being \$100,000 more than the General Balance book showed. There was an error in footing that they had made of forty cents, which they probably didn't discover in their footings, and it threw it off just that much. And then I discovered that in carrying forward the footings on Individual deposit ledger No. 2, they had carried them forward \$100,000 less than the correct footing.

Q. Now what was the effect of that upon the General Balance book; did it show on the Balance book that the liabilities of the bank in that particular instance, were \$100,000 less than they actually were?

A. It made the liabilities of the bank, as shown by their
628 General Balance book just \$100,000 less than the Individual Balance books actually showed.

Q. Now how long did this continue to be on the books in this way?

A. It continued until—this continued until the 28th day of December, 1892.

Q. Three years you mean?

A. December 15th, 1892, the grand total is correctly entered on the Balance books, but the General Balance book still shows the discrepancy of \$100,000. It is then \$100,000 less than the General Balance book shows.

The COURT: Now how would it be possible for that to get by the eyes of a good examiner for three years?

A. That's pretty hard to answer. I have a statement showing just the way in which this was done.

Q. I will ask you first, Mr. Whitmore, do you mean then that this Balance Book No. 2, that there was an error in its footing somewhere, of \$100,000 for each day from December 24th, 1889, until December 15th, 1892, so that the totals understated the actual deposits there by \$100,000?

A. Yes, sir.

By Mr. ROSE: In Individual Balance Book No. 2? I understood you to say that the Balance book was footed correctly, but wasn't carried forward correctly.

A. It was footed incorrectly until December 15th, 1892, then the correct footings were put down, but the correct amount was not put upon the balance book until the 28th of December, 1892.

Q. You may state how the books were finally made to balance,—by what entries?

A. I will give the figures on these balance books from December 23rd, 1889: Balance Book No. 1 showed a total deposit of \$148,727.34; No. 2 a total deposit of \$298,435.76. All banks showed, \$129,905.31; making a total deposit of \$575,538.629

The over-drafts on the three books amount to \$33,361.22, which made \$540,207.19 as the net amount of their deposits on the three books for this day. The net deposits as shown on General Balance Book "B" were \$540,207.59, just within forty cents of the aggregate of the three balance books correctly footed.

Now on the close of business December 24th, 1889, the deposits in the bank were Balance Book No. 1, \$130,916.03; Balance Book No. 2, \$425,548.91; Banks, \$135,027.04, Gross deposits, \$691,591.48; less overdrafts, \$44,977.88; Net deposits by the balance books correctly footed, \$646,614.10. The net deposits by the General Balance Book "B" on that day were \$546,314.50. The correct balance was \$646,614.10 and the General Balance book showed \$546,314.50.

At the close of business on December 25th, correctly footed Balance Book No. 1, showed \$125,851.47; No. 2, \$422,091.15; Banks, \$144,742.90; Gross deposits, \$692,685.52 Less overdrafts, \$42,639.07; Net deposits on balance books, \$650,046.45. Net deposits as shown on General Balance book "B" \$550,046.85. Now the footing at the bottom of a page in each of these books is carried forward to the head of the column of that particular day on the next page, and then that total footing is carried to the next page. Now sometimes the footing at the bottom of the page would be \$100,000 less than the correct footing; sometimes it would be correctly entered at

the bottom of the page, but when you look at the total carried forward to the next page at the top of the column, it would be just \$100,000 less than it was at the bottom of the preceding page. Now those changes don't appear in the same place every day during the three years, for instance January 2nd, 1890, the footing on the last "S" page was carried to the "T" page \$100,000 off, and the same practice was observed on every day during this month and the month of February, except on January 29". And so it doesn't appear in the same place each time, nor in the same manner, the footing may be incorrect by \$100,000, or if correct then carried forward \$100,000 to the succeeding page less.

Q. Now Mr. Whitmore, how were those books finally brought into balance, if you have examined to ascertain that, give us your opinion of that.

A. Well on the 24th of December, 1892, Journal G, page 91, shows that Bills Receivable of C. W. Mosher, No. 50638 for \$17,500 and R. C. Outcalt, No. 50639 for \$12,500 were discounted by the bank, Discount Register, page 288. On the same day the account of Mosher & Outcalt, that is an account kept in the name of Mosher & Outcalt was credited with an amount equal to the amount of these two notes \$30,000. On December 28 notes were put in the bank as follows:

50642 C. W. Mosher.....	\$20,000.
50643 C. W. Mosher.....	20,833.34
50640, R. C. Outcalt.....	15,000.
50641, R. C. Outcalt.....	14,166.66
Total.....	<hr/> \$70,000.

The account of Mosher & Outcalt on this day was charged with \$30,000, which made a total of \$100,000, and on that day the total balance of the Individual Deposit Ledgers agree with the net deposits carried on the General Balance Book. That is the only explanation that I have been able to find as to how they made those two books agree.

* * * * *

631 By the COURT:

Q. To carry out that transaction, Mosher and Outcalt would necessarily,—their clerk, who made those entries would know that they were false, would he not?

A. Well the clerk who made the footings on the Individual deposit ledger knew, of course that he was making a false entry, a false footing.

Q. That is all the time during those three years when that fictitious balance was shifted from one account to another whatever clerk had that in charge necessarily knew that he was making a false entry every day?

A. Yes, sir.

Q. And every bank officer who had access to the books, that is if he would examine the books would know of the falsity of that entry?

A. If he examined the Individual Deposit Ledger.

Q. That is I mean the officers who were actively in control of the bank would necessarily know of this false balance, if they had examined the books?

632-638 A. Yes, if they made a thorough examination.

By Mr. ROSE:

Q. How many books would they have to foot to catch it?

A. They wouldn't have to foot any, Mr. Rose.

By Mr. BISHOP:

Q. You said if they made a thorough examination.

A. If they examined the individual deposit ledger.

By Mr. ROSE: How would they catch it without footing it themselves.

A. It was on the 24th this was done,—from the 24th down to the 15th of December, 1892.

Q. How many days was that?

A. That was three years. Any examination made of that book without footing a single page, if they had gone over and followed the footings would have revealed the discrepancy.

Q. How many books would they have to have examined?

A. The Individual deposits for that time.

Q. How many of them were there?

A. Well during that time; they had six a year and three years would be—about 36 books.

By Mr. THOMAS:

A. Would anyone of those Individual Deposit books have disclosed it?

A. Every day from the 24th of December, 1889, to the 15th of December, 1892, there was a falsification of the total footing of one of the columns, either at the bottom of the page or at the top of the page in every Individual Deposit Ledger No. 2.

* * * * *

639 & 640 By Mr. THOMAS:

Q. I would like to have the record show that one of the books was produced and inspected by the court.

THE COURT: The book was so inspected by the court.

Q. Mr. Whitmore, have you examined the books of the Capital National Bank to ascertain what notes of the Western Manufacturing Company, executed by E. Huribut, Jr., as manager entered into and became a part of the assets of the Capital National Bank?

A. Yes, sir, I have.

Q. Over what period did that examination extend?

A. I have gone over all of the books of the bank, and it covers the period from when I first discovered notes in 1888—July 25th 1888.

Q. And up until what time?

A. Until the close of the bank.

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641 A. I have made up a statement here showing the transactions concerning those notes down to January 6, 1893, and of course there were a good many notes taken,—three large pages—I might put this schedule in evidence.

(Schedule identified as Exhibit "cc.")

Mr. THOMAS: We will offer the schedule in evidence.

Schedule, Exhibit "cc" received in evidence.

(Copy of Exhibit "CC" at page 6092 hereof.)

—the first column shows the notes when taken from day to day, and the second column shows the notes when paid from day to day, and the last column shows the amount of notes left in the hands of the bank at the close of that day's business.

Q. As shown by the books themselves?

A. Yes, sir, and I have made a very careful search of the discount register, and I have checked this back, and I think it is an absolutely correct statement.

— And that was compiled from an examination of all of the books that you have access to, Mr. Whitmore?

A. Yes, sir.

Q. Now in making this examination, did you endeavor to ascertain what interest if any was shown by the books to have been received on account of these notes, either when taken into the bank, or when they were indicated as paid, or at any other time?

642 (Here follows sheets Nos. 1, 2, and 3, of Exhibit "cc," Western Mfg. Co., appearing at page 642.)

643

A. Yes, sir.

Q. You may state the result of that investigation.

Mr. BISHOP: Each of the defendants objects as incompetent and immaterial.

Objection overruled.

Each of the defendants excepts.

A. Of course there were some notes that were turned in to the Receiver afterwards, but those are not on the books; I didn't put those in.

Q. In compiling this schedule as you have, which has been identified as Exhibit "cc" you have not included some notes that appeared at the close of the bank, and were allowed by the Receiver as having been rediscounted?

A. The Receiver receipts showed notes that I have not been able to find.

Q. Those were notes apparently issued by the same company and were outstanding and had been rediscounted by the Capital National Bank?

A. Yes, sir.

Q. And were allowed by the receiver as a charge against the bank?

Mr. ROSE: Each of the defendants objects as leading and suggestive.

A. I don't know whether they were rediscounted. The receiver's books that I examined showed that certain notes of the Western Manufacturing Company,——

Mr. ROSE: Each of the defendants objects to the recital of what the receiver's books shows as not binding upon these defendants; as a self serving declaration, that is not made by authority of any of the officers of this bank, and subsequent to the date of the transactions charged.

Objection sustained.

Each of the plaintiffs excepts.

Q. You may state what you know concerning any other notes of the Western Manufacturing Company that are not included in your schedule, and that appear to have been allowed by the receiver as a charge against the bank.

644 Mr. ROSE: Each of the defendants objects because the sources of information are not disclosed, and not shown to be subject to the inspection of the defendants; the question is too general, and calls for general knowledge and not knowledge derived from an expert examination of the books and records of the Capital National Bank.

Objection overruled.

Each of the defendants excepts.

A. All I know is that the Receiver's books showed that there were certain notes of the Western Manufacturing Company that were

allowed as claims against the Capital National Bank which did not appear upon the books of the Capital National Bank among their discounts.

Mr. ROSE: Each of the defendants moves to strike out all reference to the contents of the Receiver's books as no foundation having been laid for it.

Motion overruled.

Each of the defendants excepts.

Q. Have you made an examination to ascertain whether any interest is shown to have been received on any of the notes which are contained in your schedule, Exhibit "cc"?

A. Yes sir, I have.

Q. You may state the result of that examination.

Mr. BISHOP: Each of the defendants objects as incompetent and immaterial; no foundation laid, and the records, the course of the investigation asked for, have not been sufficiently authenticated to entitle them to be received in evidence, or secondary evidence to be given therefrom.

Objection overruled.

Each of the defendants excepts.

A. October 2, 1890, \$208.85 entered on interest book on account of Western Manufacturing Company, and charged to Western Manufacturing Company account; on August 28, 1891, I find \$122 on the Interest Received book; November 30th, 1892 I find \$280 on the Interest Received book; on December 30th 1892 I find \$1,250 on the Interest Received book.

Q. Charged to what account?

A. Well entered as having been received from the Western Manufacturing Company; they're marked Western Manufacturing Company.

Q. Is there any charge to the account of the Western Manufacturing Company on that day?

A. I don't know whether I looked it up to see whether it was charged to their deposit or not.

Q. Will you examine it and see?

A. I would have to get that book; perhaps the account is there.

(Witness looks up entry.)

A. December 30th, 1892, Western Manufacturing Company, C. W. Mosher, per H, is an account,—that shows no check for that amount on December 30th. The account is overdrawn \$1,341.54 so I don't know whether this interest was paid, any more than it was marked as having been received on that day.

Q. That is, the account of the Western Manufacturing Company is shown overdrawn \$1,341.54?

A. On that day, yes sir.

Q. It doesn't appear that there is any item of \$1,250., charged against that account?

A. No sir. It don't appear to have been included in the renewal of the notes on that day either.

The COURT: Now are the items of interest to which you have testified, the only items of interest that have been paid, as shown by the books?

A. All that I have been able to find on the books of the bank as paid on account of the Western Manufacturing Company notes from 1888 down to 1892.

Q. And in your examination, did you go through what is known as the Interest Received book?

A. Yes, sir.

Q. That was the book of original entry upon which entries of that kind were made?

A. Yes, sir.

646 Q. In your schedule, Mr. Whitmore, of this Western Manufacturing Company paper, does that include the Western Manufacturing company notes attached to the deposition read a few days ago, and identified by the reporter as Exhibits x-68, x-69, x-70, x-71, x-72, x-73, x-74, x-75, x-76, x-77, x-78, x-79, x-80, x-81, x-82, x-83, x-84, x-85, x-86, x-87, x-88, x-89, c-90, x-91, x-92 and x-93 inclusive. I will read the numbers of the notes.

Q. No. 132105?

A. I don't seem to have that.

Q. No. 141017?

A. I don't have that one.

Q. No. 135003?

A. I don't have that one.

Q. No. 133000?

A. It is not on my list.

Q. No. 135042?

A. That is not on my list.

Q. No. 133781?

A. That is not on my list.

Q. No. 131011?

A. I have that one.

Q. No. 133003?

A. I have that one.

Q. No. 118004?

A. I have that.

Q. No. 133004?

A. I have that.

Q. No. 133014?

A. I have that.

Q. No. 135005?

A. I have that.

647 Q. No. 131010?

A. I have that.

Q. No. 134003?

A. I have that.

Q. No. 134013?

A. I have that.

Q. No. 134005?

A. I have that.

Q. No. 133002?

A. I have that.

Q. No. 134004?

A. I have that.

Q. No. 133681?

A. I don't seem to have that one.

Q. No. L36081?

A. That is not on my list.

Q. No. 131819?

A. It is not on my list.

Q. No. 119007?

A. I have that.

Q. One dated August 6th, 1892 without any number?

A. It is not on my list.

Q. No. 133005?

A. I have that.

Q. No. 133041?

A. I don't seem to have that one.

Q. Have you made an examination of the books of the bank to ascertain the amounts of notes that were carried as assets of the bank at different times?

A. I have some of the notes.

Q. Did you make an investigation as to the amount of the notes of Marsh Brothers that were in the bank at different periods of the bank's existence?

648 Mr. ROSE: Each of the defendants objects as a mere repetition.

(No ruling shown.)

A. I have made up a ledger account, similar to the account of the Western Manufacturing company notes from the time of the organization of the Capital National Bank, down to its close.

Q. Well did you make an examination of the paper of Marsh Brothers, and of Mosher and Outcalt, of Donnell, Lawson & Simpson, and the Western Manufacturing Company at different periods?

A. I have made up a ledger account of each of those.

Q. Have you made a ledger account of the paper that I have just referred to that was in the bank on January 1st, 1890?

A. Yes, sir.

Q. Of that particular paper?

A. Yes, sir.

Q. You may state the result of that investigation.

Mr. ROSE: Each of the defendants objects as no foundation laid, and the books to which the witness had access are not sufficiently proved to entitle them to be received in evidence.

Objection overruled.

Each of the defendants excepts.

A. I have made up a ledger account of the Marsh paper, C. W. Mosher, R. C. Outcalt, Donnell, Lawson & Simpson, Western Manufacturing Company, E. Hurlbut, manager, and Mosher & Outcalt,—that is notes that were shown as signed by both; they're in the regis-

ter under the name of Mosher & Outcalt, and I have taken the balances that were due from each of these persons or firms on January 1st, 1890, July 1st, 1890, January 1st, 1891, July 1st, 1891, January 1st, 1892, July 1st, 1892, and January 1st, 1893, showing the amounts due from these several parties on those dates.

Exhibit "dd" identified.

649 Q. Is Exhibit "dd" the schedule to which you refer?

A. Yes, sir.

Q. Explain to the Court what that means.

A. I have taken the balances, for instance as shown by the ledger account, of the Marsh paper in the bank on January 1st, 1890,—that is one of the dates, and entered that balance in a column opposite the words "Marsh notes". It shows the amount that was due on the Marsh notes at that time in the bank, according to the books, and then in the same column the next line is C. W. Mosher's notes, the balances, and following that R. C. Outcalt's notes, Dennell, Lawson & Simpson, Western Manufacturing Company, E. Hurlbut, Manager, notes, and Outcalt & Mosher notes. And then on the second line below that I have shown the total of these several balances.

Q. Then the column under the date of January 1st, 1890 is the list of paper referred to in the bank at that time?

A. Yes sir.

Q. As shown by the books?

A. I took every six months from January 1st, 1890 down to January 1st, 1893.

Q. That pertains simply to the particular paper that is referred to in the schedule?

A. Yes, sir, in the first column.

Q. Now with reference to Exhibit "ee" you may explain what that shows.

Q. "ee" is a statement of the liabilities of the bank, which were in existence—some of the liabilities which were in existence at the dates named, and which were not apparent from the books.

Q. You don't pretend to give all of them?

A. No, some that I found that I know of that were in actual existence at those dates, for instance a certificate No. 21739 of J. E. Hill, which was on the books at a smaller amount, \$50,000., and a false footing on Deposit Ledger No. 2, \$100,000 and then certain other certificates coming in later, one of D. B. Welch, No. 2471, \$10,000, and one, No. 25097 J. E. Hill, \$50,000; and No. 268181 Poultney National Bank, \$5,000, No. 27401 George Alcott, Cashier, \$5,000, and two certificates, numbers 27978 and 28009, La Salle National Bank, for \$5,000 each.

Q. That is Exhibit "ee"?

A. These were liabilities that actually existed at the dates named, but were not shown by the books.

Mr. THOMAS: We offer in evidence Exhibits "dd" and "ee".

Exhibits "dd" and "ee" received and read in evidence.

(Copy may be found at next succeeding page.)

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652 & 653 Q. Mr. Whitmore, in your former testimony you referred to Bills Receivable, or notes, of Donnell, Lawson & Simpson that appeared among the assets of the Capital National Bank from time to time. I will ask you if you made a schedule showing the amount of this paper, when it entered the bank, and when it appears to have been taken out of the balances in the bank from time to time?

A. Yes sir, I made up a ledger account.

(Exhibit "ff" Identified.)

Q. Is Exhibit "ff" the account to which you refer?

A. Yes, sir.

* * * * *

(Here follows sheet 1, "ff," appearing at page 654.)

655-657 Q. Have you prepared from the books of the bank, the Marsh National Bank and the Capital National Bank a schedule or statement showing the different items of this Marsh paper that entered the assets of the bank as Bills Receivable, also showing when it appears to have been paid, and the amounts of notes on hand in the bank at the various dates?

A. Yes, sir.

Q. Will you hand that exhibit to the reporter and have it identified as Exhibit "gg."

(Paper so identified.)

Q. From what books was that prepared?

A. Made up from the books of the Capital National Bank and the Marsh National Bank, also.

Q. Explain to the court what that schedule means, how you prepared it, so it will be understood?

A. It shows the notes that were taken into the bank, the numbers and amounts, and the names are Sycamore Marsh Harvester Company, C. W. and W. W. Marsh, Marsh, Marsh Harvester Company, Marsh Binder Manufacturing Company, C. E. Tuerk and Blakely Marsh and Company.

Q. That shows the paper as it came into the bank?

A. And also some notes that were entered in one place as notes of other individuals, but are marked on the books of the bank at different places as Marsh paper, or Sycamore Harvester Company, or something to indicate that apparently they were Marsh notes; those are all indicated in the schedule here.

Mr. ROSE: These are the instances that you detailed the other day from the Journal?

A. Yes sir.

Q. All except one of those notations were pencil notations?

A. Yes sir. I think on the Discount Register the notes were entered as "Marsh" sometimes.

* * * * *

658 Q. Do you remember of making search for that Tuerk note in the first entries of the bank?

A. I think the first note appears in—No. 5664, May 28, 1884.

Q. And what amount?

A. It is \$3,225.67.

Q. And does that and its renewals remain in the bank right along?

A. That note apparently goes through the account; the next time it appears it is paid, \$3,225.67, and it is renewed for \$3,254.77, and then \$3,254.77 is paid and \$3,490.04 is taken, adding interest apparently and the note keeps on increasing in that way.

Q. And it finally turns up at the failure of the bank at what amount?

A. I think the last note is \$7,289.10.

Q. That is the original note of some three thousand dollars renewed with the interest accumulations added to it apparently?

171-479 3419 m.

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A. Well the note keeps on increasing from 1884 on down; there were accretions, I presume it was interest, we found interest on the Interest Received boom sometimes, and sometimes we would not.

659 Q. But when one is marked paid the other appears in the bank as a renewal apparently?

A. I think in every case when one was renewed there was another note taken in the same name for a larger amount, although in some instances the notes would disappear for a while and then reappear.

Mr. THOMAS: We offer in evidence the schedule, Exhibit "gg."

A. Then I have a balance showing what was due each day, or each time there was any posting. Of course the balances showing here will continue unchanged until there was another posting to the ledger account.

Q. Have you the total of Bills Receivable taken into the bank, as shown there?

A. Yes, sir.

Q. Give us that.

A. \$510,628.71.

Mr. ROSE: There is no particular significance in that total is there?

A. Simply to get at the balance.

Q. That wouldn't indicate what was in the bank at any time?

A. Oh, no, the balances would show that. I think the evidence shows how many of these Marsh notes were taken into the bank. Of course that will vary some from this, because the Receiver didn't find these three notes that I speak of.

Exhibit "gg" received in evidence. (To be found at page 626½ hereof.)

660-662 (Here follow sheets Nos. 1, 2, and 3, Exhibit "gg," appearing at page 660.)

* * * * *

663 (Here follow sheets Nos. 1 and 2, Exhibit "hh," appearing at folio 663.)

664 & 665 Mr. ROSE: I would like to cross examine the witness on the competency of this document.

The COURT: Proceed.

By Mr. ROSE:

Q. Did you find any irregularities in the transactions of Mr. Holmes with that bank?

A. No sir.

Q. Did you find every note that he ever gave paid?

A. That is what I say.

Q. The account balanced. You examined it clear through the journal?

A. Certainly.

Q. So far as you discovered, it represented a straight business transaction.

A. So far as I know.

* * * * *

(Here follow sheets Nos. 1, 2, and 3, Exhibit "II," appearing at page 666.)

667 & 668

* * * * *

669 Q. Are there *and* notations there that require explanation?

A. No sir.

Mr. THOMAS: We offer Exhibit "kk" in evidence.

Mr. ROSE: I would like to cross examine the witness on that subject.

The COURT: Proceed.

Mr. ROSE: Did the transactions between the bank and R. O. Phillips seem to balance in every respect?

(Here follow sheets 1, 2, 3, and 4, Exhibit "JJ," appearing at page 670.)

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671 A. Yes sir.

Q. And indicate that Mr. Phillips paid all his indebtedness to the bank?

A. No, I think he had a thousand dollar note in the bank when the account closed.

Q. He paid that to the receiver, didn't he?

A. I don't know whether he did or not.

Q. Don't you have the receiver's record here? You mentioned having gotten some items from the receiver's record.

A. That was eight years ago.

Q. Is the receiver's record here?

A. No sir.

Q. Not in court?

A. Not to my knowledge.

Q. Do they indicate that they were the ordinary loans and discounts in Mr. Phillips' case?

A. Yes, sir.

Q. Is there anything to cast any suspicion as to the regularity of his transactions with the bank?

Mr. THOMAS: Plaintiffs object to that as not proper cross examination and immaterial.

Objection overruled.

Plaintiffs except.

A. No sir.

* * * * *

672 (Here follow sheets Nos. 1 and 2, Exhibits "kk," appearing at folio 672.)

* * * * *

673 Q. Now, Mr. Whitmore, you never found a period from the organization of the bank until it closed when Mr. Yates had promissory notes in there aggregating at one time as much as \$5,000, did you?

Mr. THOMAS: That is objected to as not proper cross examination to show the competency of the exhibit.

Objection overruled.

Plaintiffs except.

A. No he hadn't at any one time to exceed, or as much as \$5,000.

Q. And he hadn't at any time any obligations in there that were not paid off in short intervals?

A. They were paid off; his account shows that it was frequently balanced.

674-676 Q. What was the last day that he had any loan at all in there?

A. October 7th, 1885.

Q. So that in a period of eight years before the suspension of the bank, Mr. Yates hadn't borrowed a dollar from the bank, according to the books?

A. I think that is a mistake, Mr. Rose. 1889, June 3rd,—this is only one sheet,—the other sheet they started to make a copy on, it wasn't completed. You will find it goes down to 1889.

Q. Is there anything in there to indicate that the bank suffered any loss, or that any transaction of Mr. Yates with the bank wasn't legitimate?

A. Nothing that I know of.

Q. What would be your conclusion from an examination of the account as to whether his transactions with the bank, so far as his personal borrowing was concerned, were legitimate?

Mr. THOMAS: That is objected to as not proper cross examination and immaterial, and it does not effect the competency of the exhibit.

Objection overruled.

Plaintiffs except.

A. Everything that I can see in connection with Mr. Yates' borrowing there is regular and legitimate.

* * * * *

674 (Here follows sheet No. 1, Exhibits "LL," appearing as folios 674-75.)

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677-681 Q. And it does show, for the most part they were in there for but a few days. Now what was the highest amount of indebtedness that the books of the bank show that Mr. Thompson had at any one time?

A. \$10,000.

Q. And for how long a period of time did he have as high an indebtedness as that to the bank?

A. From the 27th of August, 1887 to Sept. 13th, 1887.

Q. At all other times when he had any indebtedness, it was for a smaller amount than ten thousand dollars.

A. Yes sir.

Q. Do the books show that all of his notes were paid?

A. Yes sir.

Q. Do they show that any of them were suffered to remain there past due?

A. As to that I didn't look.

Q. Did you check up the interest items to see whether the Interest Received account shows that he paid interest every time?

A. No, I didn't.

Q. Now I want to ask you what is your conclusion from an inspection of those notes as to whether they appear to represent regular and legitimate transactions with the bank?

A. I think they do.

Q. Is there any exception, when you could deduce any other conclusion from any entry in the book concerning them?

A. No sir.

Mr. ROSE: We will let that go in without objection.

Exhibit "mm" received without objection.

(Copy at page 638½ hereof.)

(Here follows sheet No. 1, Exhibit "MM," appearing as page 678.)

* * * * *

680 (Here follows sheet No. 1, Exhibit "NN," appearing as page 680.)

* * * * *

682 Mr. THOMAS: We offer in evidence Exhibit X-1039 which is a portion of the General Balance book, identified by the reported as Exhibit X-19 and purports to be the condition of the bank, that is the account showing its assets and liabilities und-r date of Wednesday, December 29th, 1886.

Mr. ROSE: Defendants severall- object as no foundation laid, and the book has not been sufficiently proved to entitle it to be received in evidence.

Objection overruled. Each of the defendants excepts.

Exhibit No. X-1039 received and read in evidence, as follows:

WEDNESDAY, Dec. 29/86.

Capital Stock	300,000.00	
Surplus	12,000.00	
U. S. Bond a/c	50,000.00	
Premium a/c	7,188.43	
Circulation a/c		45,000.00
Redemption Fund	1,900.00	
Stock & Bond a/c.....	22,739.34	
Furniture a/c	5,650.00	
B/R.	725,826.12	
Cash	55,378.44	
Bills of Exchange	25,458.45	
Commercial Nat'l Bank, Chic.	27,747.31	
U. S. National Bank, Omaha.....	14,011.93	
Omaha Nat'l Bank "	4,628.78	
Merchants Nat'l Bank "	1,911.83	
Commercial Nat'l Bank, Omaha.....		603.20
Chemical Nat'l B'k	46,321.32	
Drovers Nat'l Bank	158.73	
Blackstone Nat'l Bank.....	4,865.70	
American Exchange, in Europe.....	66.46	
First Nat'l Bank, Beatrice.....		5,307.67
Merchants Nat'l Bank, Nebr. City....		268.40
Bank of Cass County	47.15	
Schuster, Hax & Co.	1,500.73	
First Nat'l Bank, Kans. City.....	5,179.87	
Walsh & Putnam	11,600.00	
Hurlbut E. Jr.	667.83	
Undivided Profits		9.36
Rediscount		52,090.60
Real Estate	1,450.00	
Tax	77.33	
C. W. Marsh	521.65	
Discount, Interest & Ex.		36,644.92
Interest Paid	8,214.90	
Wages	5,149.98	
Expense	3,735.67	
Deposit a/c		580,073.80

1,031,997.95 1,031,997.95

Overdrafts, \$11,665.87.

Exhibit X-1039.

683 Q. Mr. Whitmore, I will ask you if you have compared the statement of the condition of the bank as shown by Exhibit X-1039, with the statement of its condition as shown by Exhibit X-977, being the condition of the bank at the close of business, December 28th, 1886?

A. I have.

Q. Why do you take the column of the General Balance Book under the head of Wednesday, December 29th, 1886?

A. Because the way the books of this bank were kept the balances shown under a certain date refer to the close of business of the preceding day.

Q. Then the statement contained under the head of Wednesday, December 29th, 1886 would reflect the condition of the bank at the close of business December 28th, 1886.

A. Yes sir, the opening of business, on the morning of the 29th would.

Q. You say you have made a comparison of those two statements?

A. Yes, sir.

Q. And you may state what discrepancies you find, if any in those two exhibits.

A. I find the overdrafts stated in the published report are \$7,691.54 less than those shown on the Individual Deposit ledgers. The overdrafts themselves do not appear upon the General Balance book of the bank. The loans in the published statement are \$11,400.00 more than the loans shown on the books of the bank. The totals of the amounts due from all banks is \$35,339.47 more than the totals due from all banks as shown on the books of 684 the bank. I think that was stated as \$11,600 eight years ago, but in checking it over from what I have access to now, the copies of the published statements in the record,—I don't know whether there is a mistake of \$200 in copying them or not, but it makes a difference there I notice of \$200. The item of Bills of Exchange shown on the books of the bank, is not shown as a separate item in the published statement,—\$25,458.45.

Q. That does not appear in the published statement?

A. It does not appear as a separate item in the published statement. In the matter of real estate, the published statement shows \$7,177.33, and the real estate shown on the book is \$1,450, and the furniture account is shown,—the real estate is shown as Real Estate, Furniture and Fixtures—\$7,177.33, and the real estate alone is \$1,450. The book value of the furniture and fixtures is \$5,650, making \$7,100.

Mr. ROSE: What is the amount of the discrepancy?

A. \$77.33.

Mr. THOMAS: We now offer in evidence Exhibit No. X-1040, contained in book identified by the reporter as Exhibit X-19, purporting to be the condition of the Capital National Bank as shown by the General Balance Book under date of Tuesday, August 2nd, 1887.

Mr. ROSE: Each of the defendants object to the offer as incompetent, immaterial and no issue tendered; there is no specification

in the petition that any false statement was made or published, or attested by any of the defendants under any such a date, set forth in the petitions if the several plaintiffs; also object to it because the book itself is not proved or established in such form as to entitle it to be received in evidence.

Objection overruled.

Each of the defendants excepts.

Exhibit No. X-1040 received and read in evidence.

(Copy of next succeeding page.)

Exhibit X-1040.

685

EXHIBIT No. X-1040.

TUESDAY Aug. 2/87.

Capital Stock	300,000.00	
Surplus a/c	16,000.00	
U. S. Bond a/c	50,000.00	
Premium a/c	6,200.00	
Circulation a/c		45,000.00
Redemption fund	2,250.00	
Stock & Bond a/c	15,281.00	
Furniture a/c	5,650.00	
B/R.	832,941.44	
Cash	87,631.50	
Bills of Exchange	42,096.44	
Commercial Nat'l Bank, Chic.	11,998.98	
American Exch. Nat'l Bank.	3,048.07	
U. S. Nat'l Bank, Omaha.	12,079.52	
Omaha Nat'l Bank "	6,130.13	
Merchants Nat'l Bank, "		948.75
Commercial Nat'l Bank, "		2,335.16
Chemical Nat'l Bank.	28,570.52	
Drovers Nat'l Bank	131.53	
Blackstone Nat'l Bank	240.97	
American Exchange, in Europe.	722.54	
First Nat'l Bank, Beatrice.	639.48	
Merchants Nat'l Bank, Neb'r City.	300.11	
Bank of Cass County.	467.39	
Schuster, Hax & Co.	3,119.24	
First Nat'l Bank, Kan's City.	1,058.18	
South Omaha Nat'l Bank.	1,042.48	
Walsh & Putnam	10,400.00	
Hurlbut, E. Jr.	442.83	
Undivided Profits		30.18
Real Estate,	17,874.32	
C. W. & W. W. Marsh.	3,008.35	
Discount, Int. & Exch.		6,799.24
Wages a/c	1,083.33	
Interest Paid a/c	2,835.72	
Expense a/c	1,360.05	
Deposit a/c		777,490.79
	<u>1,148,604.12</u>	<u>1,148,604.12</u>

Country Bank overdrafts	3,435.07
Overdrafts	53,828.74
	<hr/> 57,263.81

686 Q. Now I will ask you, Mr. Whitmore, if you have examined the exhibit referred to, X-1040,—if you have compared Exhibit X-1040 with Exhibit X-978?

A. Yes, sir.

Q. You may state what discrepancies, if any, you find in those two exhibits.

A. The overdrafts as published are \$51,032.12 less than the overdrafts shown on the books. The loans are \$75,681.97 more than shown on the books; the amount due from banks is \$53,313.71 more than shown by the books; the Real Estate, Furniture and Fixtures is \$17,874.32 less than shown by the books. The cash is \$10,462.98 more than shown by the books. The item Bills of Exchange is not shown in the published report, of \$42,096.44.

Mr. THOMAS: We now offer in evidence Exhibit X-1041 contained in Exhibit X-19, and purporting to state the condition of the Capital National Bank as shown by its General Balance Book, under date of Thursday, October 6th, 1887.

Mr. ROSE: Each of the defendants objects as incompetent, immaterial, there being no issue, there being no charge contained in the petition of any of the several plaintiffs that the defendants made or participated in the making of a statement of the condition of the bank upon that day, and no charge of deceit based upon any such report, and further because the book itself is not sufficiently proved to entitle it to be received in evidence.

Objection overruled.

Each of the defendants excepts.

Exhibit No. X-1041 received in evidence as follows:

687 EXHIBIT No. X-1041.

THURSDAY, Oct. 6/87.

Capital Stock	300,000.00
Surplus	16,000.00
U. S. Bond a/c.....	50,000.00
Premium a/c	5,500.00
Circulation	45,000.00
Redemption Fund	2,250.00
Stock & Bond a/c.....	16,129.56
Furniture a/c	5,650.00
B/R	{ 867.30 }
	{ 186,663.80 }
Cash	104,617.55
Bills of Exchange.....	42,458.65
Chemical Nat'l Bank.....	7,496.58
American Exch. Nat'l Bank.....	21,742.29

Commercial Nat'l Bank, Omaha.....	114.90	
U. S. Nat'l Bank,	21,724.78	
Omaha Nat'l Bank,	4,078.88	
Merchants Nat'l Bank,	453.19	
First Nat'l Bank, Kans. City.....	922.94	
Schuster, Hax & Co.....	816.45	
Drovers Nat'l Bank.....		1,071.07
Blackstone Nat'l Bank.....	3,590.67	
American Exchange in Europe.....	1,268.86	
South Omaha Nat'l Bank.....	1,478.28	
Merchants Nat'l Bank, Nebr. City....	468.53	
First National Bank, Beatrice.....		1,997.55
Bank of Cass County.....		323.29
Commercial Nat'l Bank, Chic.....	491.17	
Clearing House a/c.....		4,159.04
Walsh & Putnam.....	10,000.00	
Hurlbut, E. Jr.....	442.83	
Undivided Profits		30.18
Rediscount a/c		10,000.00
Real Estate a/c.....	15,888.82	
C. W. & W. W. Marsh.....	2,974.19	
Discount, Int. & Exch.....		19,306.82
Wages a/c	3,249.99	
Interest Paid a/c.....	9,474.22	
Expense a/c	2,503.48	
Deposit a/c		725,430.36
	<u>1,223,318.31</u>	<u>1,223,318.31</u>

688 Q. I will ask you Mr. Whitman if you have made a comparison of the condition of the bank, as disclosed by Exhibit X-1041 and Exhibit X-979?

A. Yes, sir.

Q. You may state what discrepancies, if any, you find.

A. The overdrafts as published are \$20,780.12 less than the books show. The loans are \$44,658.83 more than the books show; due from all banks \$60,435.78 more than the books show; real estate \$14,438 less than the books show; the item of Bills of Exchange \$42,458.65 not shown as such.

Mr. THOMAS: We now offer in evidence Exhibit X-1043, contained in Exhibit X-20, being the statement of the condition of the Capital National Bank as shown by its General Balance Book under date of Tuesday October 1st, 1889.

Mr. ROSE: That is objected to on the part of D. E. Thompson, because it is irrelevant and immaterial; there being no proof that Mr. Thompson either made or participated in making any report of the condition of the bank at or about that time, or in the publication of any statement thereof; there being no allegations contained in either of the petitions against him that he so did. And for the further reason that the book itself is not sufficiently proved or authenticated to entitle it to be received in evidence under the statute.

Objection overruled.

Defendant Thompson excepts.

Mr. Bishop: The defendant Hamer makes the same objection as made by defendant Thompson, and the defendant Yates makes the same objection and that the report is not one alleged in any of the petitions, nor are any representations stated in it stated in any of the petitions as a ground of recovery.

Objection overruled.

Defendants Yates and Hamer except.

689 Exhibit X-1043 received in evidence as follows:

TUESDAY, Oct. 1/'89.

Capital Stock	300,000	
Surplus a/c		24,000.
U. S. Bond a/c.....	50,000.00	
Premium a/c	3,750.00	
Circulation a/c		45,000.00
Redemption Fund.....	1,500.	
Stock & Bond a/c.....	21,954.94	
Furniture a/c	5,770.00	
B/R	761,156.53	
Cash	65,054.70	
Bills of Exchange.....	36,665.78	
Chemical Nat. Bank.....	1,550.94	
Am. Exch. Nat. Bank.....	14,996.55	
Com'l Nat. Bank, Omaha.....	540.89	
U. S. Nat. Bank, "	13,690.85	
South Omaha Nat. Bank.....	442.19	
First Nat. Bank, Kan. City.....	731.31	
Schuster Hax Nat'l Bank.....	413.38	
Drover's Nat. Bank.....	59.04	
Blackstone Nat'l Bank.....	1,487.80	
Am. Exch. in Europe.....	725.40	
Merchants Nat. Bank, Neb. City.....	338.51	
First Na. Bank, Beatrice.....		2,900.20
Bank of Cass County.....	153.36	
Com'l Nat. Bank, Chicago.....	746.22	
Knauth, Nachod & Kuhne.....	26.09	
Clearing House a/c.....	12,597.50	
Walsh & Putnam.....	8,500.	
Undivided Profits		598.38
Rediscount a/c		15,682.92
Real Estate a/c.....	37,976.70	
C. W. & W. W. Marsh, Colls.....	4,969.65	
Discount, Int. & Exchange.....		16,508.99
Wages a/c	4,453.32	
Suspense	9.20	
Interest Paid a/c.....	2,895.64	
Expense a/c.....	3,473.06	
Deposit		626,744.06
	<u>1,044,032.05</u>	<u>1,044,032.05</u>

690-692 Q. Have you made a comparison of the statement purporting to show the condition of the Capital National Bank, as contained in Exhibit No. X-1043, with the statement of its condition as shown by Exhibit X-983?

A. Yes, sir.

Q. Purporting to be for September 30th, 1889?

A. Yes, sir.

Q. You may state what discrepancies, if any, there are in those two statements.

A. I find the overdrafts to be \$30,924.05 less in the published statement than shown by the deposit books; I find the loans \$39,003.35 more than shown by the books; I find the item Due from All Banks \$88,056.13 more than as shown by the books. Now the item of notes or bills rediscounted would be \$46,000 more than shown by the books. The item of Bills of Exchange is not shown as such in the published statement.

Mr. ROSE: What was the item of Bills of Exchange not shown?

A. \$36,665.78.

Mr. THOMAS: We now offer in evidence Exhibit X-1044, contained in Exhibit X-20, in the General Balance book of the Capital National Bank and purporting to show its condition—the condition of its assets and liabilities under the head of Thursday, December 12, '89.

Mr. ROSE: That is objected to by each of the defendants because it is irrelevant and immaterial; there is no proof that any of these defendants either made or participated in the making or publishing of any report of the condition of this bank upon the date of this entry in the balance book, because there is no allegation in the petition that any of the defendants made or participated in or permitted the making or publishing of any report of the condition of the Capital National Bank at or about the date of said entry, and also because no foundation has been laid for the admission of the entry as a book of account, and the book itself has not been sufficiently proven to entitle it to be received in evidence under the statute.

Objection overruled.

Each of the defendants excepts.

Exhibit No. X-1044 received and read in evidence, as shown on next succeeding page.

693-699

EXHIBIT X-1044.

THURSDAY, Dec. 12/89.

Capital Stock	300,000.00	
Surplus a/c	24,000.00	
U. S. Bond a/c	50,000.00	
Premium a/c	3,750.00	
Circulation a/c		45,000.00
Redemption Fund	1,709.41	
Stock & Bond a/c	11,954.94	
Furniture	5,770.	
B./R.	742,485.61	
Cash	38,643.31	
Bills of Exchange	32,036.78	
Chemical Nat. Bank	22,379.67	
Am. Exch. Nat. Bank	10,047.26	
Com'l Nat. Bank, Omaha		1,721.92
U. S. Nat'l Bank "	2,656.98	
South Omaha Nat. Bank	402.58	
First Nat. Bank, Kas. City	1,211.18	
Schuster Hax Nat. Bank	252.17	
Blackstone Nat. Bank	461.45	
American Exchange in Europe	725.40	
Merchants Nat. Bank, Neb. City	246.45	
First Nat. Bank, Beatrice		3,517.07
Bank of Cass County	13.40	
Com'l Nat. Bank, Chic.	288.39	
Knauth, Nachod & Kuhne		24.08
Clearing House a/c		
Walsh & Putnam	8,500.00	
Undivided Profits		598.38
Rediscount a/c		138,103.49
Real Estate a/c	41,565.47	
C. W. & W. W. Marsh, Colls.	4,969.65	
Discount, Int. & Exchange		32,807.20
Wages a/c	6,699.98	
Suspense a/c		17.38
Interest Paid	9,559.91	
Expense a/c	4,259.91	
Deposit a/c		453,995.22
	1,000,187.32	1,000,187.32

* * * * *

700 Q. Now I will ask you if you have made the comparison
called for in my last question.

701 A. I have compared the published report which purported
to give the condition of the bank at the close of business on
December 11th, 1889, with the books of the bank which showed its
condition at the close of business on December 11, 1889.

Q. You may state what discrepancies, if any, you find in those two statements.

Mr. ROSE: Each of the defendants object- to that for the same reasons assigned to the introduction of the exhibit, and for the further reason that it appears on the face of this report fairly, that the date with which comparison is sought to be made is not the date of the bank's business that formed the basis of that report.

The COURT: It is the previous day's business, is it not, Mr. Whitmore?

A. Yes sir, as I said in all cases.

The COURT: Proceed.

Each of the defendants excepts.

A. I find that the overdrafts as published are \$44,543.70 less than as shown on the individual deposit ledgers at the close of business on December 11th; I find that the loans as published are \$66,295.65 more than as shown on the books for that day; I find that the amount due from banks is \$44,809.47 more than is shown by the books of the bank at the close of business on December 11th, 1889; I find that the cash in the published report is \$18,735.55 more than is shown by the books; I find that notes and bills rediscounted \$12,081.25 more than is shown by the books. The item of Bills of Exchange \$32,036.78 is not shown as such.

Mr. THOMAS: We now offer in evidence Exhibit No. X-1046, contained in book Exhibit X-20 being the statement of the condition of the bank under the heading column, Saturday December 20th, 1890.

Mr. ROSE: Each of the defendants object- to that exhibit for the reason that it is irrelevant and immaterial; there is no allegation in any of the petitions of plaintiffs that any one of the defendants either made or participated in, or permitted the making or publishing of the report of the condition of the Capital National Bank at the date of these entries, and no proof that either of the defendants did so make or participate or permit the publication of any such report; for the further reason that the book itself is not sufficiently proved to entitle it to be received in evidence.

Objection overruled.

Each of the defendants excepts.

Exhibit No. X-1046 received and read in evidence.

Copied on next succeeding pages.

703

EXHIBIT No. X-1046.

SATURDAY, Dec. 20/90.

Capital Stock	300,000.00	
Surplus a/c		28,000.00
U. S. Bond a/c	50,000.00	
Premium a/c	2,400.00	
Circulation a/c		45,000.00
Redemption Fund	2,250.00	
Stock & Bond a/c	6,909.88	
Furniture a/c	5,770.00	
B/R.	823,829.70	
Cash	63,326.82	
Bills of Exchange	39,424.90	
Chemical Nat. Bank	20,866.95	
Am. Exch. Nat. Bank	16,448.84	
Com'l Nat. Bank, Omaha	5,503.53	
U. S. Nat. Bank "	15,020.70	
South Omaha Nat. Bank	849.93	
First Nat. Bank, Kans. City	570.21	
Schuster, Hax: Nat. Bank	4,108.32	
Blackstone Nat. Bank	231.58	
Am. Exch. in Europe	725.40	
Merchants Nat. Bank, Neb. City	1,035.49	
First Nat. Bank, Beatrice		313.64
Bank of Cass County		98.23
Com'l Nat. Bank, Chicago	675.08	
Knauth, Nachod & Kuhne	153.82	
Clearing House a/c		6,887.02
Walsh & Putnam	5,600.00	
Undivided Profits		500.19
Rediscount a/c		43,676.25
Real Estate a/c	55,099.59	
Discount, Int. & Exch.	33,085.61	
Wages a/c	6,750.23	
Suspense a/c	9.26	
Taxes Paid a/c	2,000.00	
Interest a/c	14,769.98	
Expense a/c	2,775.51	
Deposit		689,544.78
	<u>1,147,105.72</u>	<u>1,147,105.72</u>

704

Q. I will ask you, Mr. Whitmore, if you have made an examination of Exhibit X-1046, showing the condition of the Capital National Bank as reflected by its general balance book and compared it with Exhibit X-985 purporting to be the condition of the Capital National Bank at the close of business December 19th, 1890?

Mr. ROSE: Each of the defendants object to that for the reason it is irrelevant and immaterial; there is no allegation in any of the petitions of plaintiffs that any one of the defendants either made or participated in, or permitted the making or publishing of the report of the condition of the Capital National Bank at the date of these entries, and no proof that either of the defendants did so make or participate or permit the publication of any such report; for the further reason that the book itself is not sufficiently proved to entitle it to be received in evidence.

Objection overruled.

Each of the defendants excepts.

A. I have compared the published statement of the Capital National Bank, which purported to give its condition as shown by its books at the close of business on December 19, 1890 with its books for the same date, and found that the overdrafts as published was \$24,621.64 less than the overdrafts shown by the individual deposit ledgers; that the loans and discounts as published were \$23,612.70 more than as shown by the books; that the amount due from all banks was \$79,007.16 more than as shown by the books; that the amount of cash as published was \$20,000 more than as shown by the books; that the notes and bills rediscounted were \$52,973.22 more than shown by the books; that the item of Bills of Exchange, \$39,424.90 was not shown as such.

Mr. THOMAS: We now offer in evidence Exhibit No. X-1047, being contained in book marked Exhibit X-20, and being a portion of the general balance book of the Capital National Bank, purporting to give the condition of the Capital National Bank under the column heading Friday, July 10th, 1891.

705 Mr. ROSE: That is objected to by each of the defendants severally as irrelevant and immaterial; there being no allegations in the petitions of any of the plaintiffs that the defendants, or any of the defendants either made or participated in, or wilfully permitted either the making or publication of a report of the condition of the Capital National Bank at the date shown in the column heading of the entries offered; nor is there any proof that any of the defendants in fact either made or participated in making, or publishing of any such report, and because the book itself is not sufficiently proved or established to entitle it to be received in evidence as a book of account under the statute of Nebraska.

Objection overruled.

Each of the defendants excepts.

Exhibit No. X-1047 received and read in evidence.

(Copy on next page.)

706

EXHIBIT No. X-1047.

FRIDAY, July 10/91.

Capital Stock	300,000.00	
Surplus a/c	30,000.00	
U. S. Bond a/c	50,000.00	
Premium a/c	1,437.50	
Circulation a/c		45,000.00
Redemption Fund	600.00	
Stock & Bond a/c	52,913.49	
Furniture a/c	5,770.00	
B/R	801,780.97	
Cash	67,398.46	
Bills of Exchange	9,332.75	
Chemical Nat. Bank		27,672.60
Am. Exch. Nat. Bank		4,109.81
Com'l Nat. Bank, Omaha		13,123.61
U. S. Nat. Bank	1,984.76	
South Omaha Nat. Bank	1,963.93	
First Nat. Bank, Kans. City	52.13	
Schuster Hax Nat. Bank	619.72	
Blackstone Nat. Bank	177.74	
Am. Exch. in Europe	725.40	
Merchants' Nat. Bank	1,024.96	
First Nat. Bank, Beatrice		3,999.39
Bank of Cass County		36.32
Knauth, Nachod & Kuhne	80.04	
Clearing House a/c		3,229.16
Walsh & Putnam	2,800.00	
Undivided Profits		16,003.79
Rediscount a/c		117,391.10
Real Estate a/c	56,230.60	
Taxes Paid a/c	1,500.00	
Discount, Int. & Exch.		1,301.08
Wages a/c	1,068.33	
Suspense	105.06	
Interest Paid	733.77	
Expense a/c	408.14	
Deposit a/c		496,840.91
	<hr/>	<hr/>
	1,058,707.77	1,058,707.77

707 Q. Have you examined the condition of the Capital National Bank as disclosed by its General Balance Book, and particularly identified as Exhibit X-1047, and compared it with the condition as shown in Exhibit No. X-986 purporting to be the condition at the close of business July 9th, 1891 as published?

A. Yes, sir.

Q. You may state what discrepancies, if any, you find in those two statements?

Mr. ROSE: That is objected to as immaterial and irrelevant; there being no allegation in the petitions of any of the plaintiffs that the defendants, or any of the defendants, either made or participated in, or wilfully permitted either the making or publication of a report of the condition of the Capital National Bank at the date shown in the column heading of the entries with which the comparison is to be made; nor is there any proof that any of the defendants in fact either made or participated in the making of any such report, and because the book itself is not sufficiently proved or established to entitle it to be received in evidence as a book of account under the statute of Nebraska.

Objection overruled.

Each of the defendants except.

A. I have compared the published statement of the Capital National Bank purporting to show its condition at the close of business on July 9th, 1891, with the books of the bank showing its condition at the close of business on July 9th, 1891; I find that the overdrafts as published are \$50,050.26 less than the overdrafts shown on the individual deposit ledger; I find that the loans and discounts as published are \$96,230.60 more than shown by the books; I find the amount due from all banks as published \$72,183.01 more than shown by the books; I find that the item of Bills of Exchange, \$9,332.75 is not shown as such. I find in the published report an item of Banking House, Furniture and Fixtures \$5,770. Real Estate of \$76,230.60 is not shown in the published statement as such.

708 Mr. THOMAS: We now offer in evidence Exhibit No. X-1048 contained in Exhibit X-20 being General Balance Book, of the Capital National Bank, purporting to show the condition of the bank under the heading of Saturday, September 26th, 1891.

Mr. ROSE: That is objected to by the defendants Thompson and Yates for the reason that it is immaterial; it not appearing that either of said defendants either made, or participated, or permitted the making or publishing of any report of the corresponding date; because it is not alleged in the petitions in any of the cases that the defendants made or participated in the making of any report of the condition of the bank on the corresponding date; and, because the book itself is not sufficiently proved to entitle it to be received as a book of account under the statute of this state.

Objection overruled.

Defendants Thompson and Yates severally except.

Mr. BISHOP: The defendant Hamer objects as immaterial; it not appearing that he ever made, participated in or permitted the making or publishing of any report of the corresponding date, and because it is not alleged in the petitions in any of the cases that the defendants made or participated in the making of any report of the condition of the bank on the corresponding date, and because the book

itself is not sufficiently proved to entitle it to be received as a book of account under the statute of this state.

Objection overruled.

Defendant Hamer excepts.

Exhibit No. X-1048 received in evidence. (See copy on the next succeeding page.)

* * * * *

709

EXHIBIT No. X-1048.

SATURDAY, Sept. 26/91.

Capital Stock	300,000.00	
Surplus a/c	32,000.00	
U. S. Bond a/c	50,000.00	
Premium a/c	868.82	
Circulation a/c		45,000.00
Redemption Fund	2,250.00	
Stock & Bond a/c	53,063.49	
Furniture a/c	5,770.00	
B/R	765,133.40	
Cash	59,451.46	
Bills of Exchange	10,794.09	
Chemical Nat. Bank	18,442.41	
Amer. Exch. Nat. Bank	8,263.27	
Com'l Nat. Bank, Omaha		286.61
U. S. National Bank, "	14,908.97	
So. Omaha Nat. Bank .....	.43	
First Nat. Bank, Kas. City	380.06	
Schuster Hax Nat. Bank	288.88	
Blackstone Nat. Bank	620.48	
Amer. Exch. in Europe	725.40	
Merchants Nat. Bank, Nebr. City		416.
First Nat. Bank, Beatrice	2,458.92	
Bank of Cass Co.		66.32
Knauth, Nachod & Kuhne	169.01	
Clearing House a/c		3,914.82
Walsh & Putnam	2,800.	
Undivided Profits		253.79
Rediscount a/c		198,571.52
Real Estate a/c	56,478.20	
Taxes Paid	1,500.	
Dis. Int. and Exch.		14,531.78
Wages a/c	3,239.	
Suspense a/c	127.83	
Int. Paid a/c	3,495.40	
Expense a/c	2,423.92	
Deposit a/c		473,112.60
Continental Nat. Bank	4,500.00	
	<hr/>	<hr/>
	\$1,068,153.44	\$1,068,153.44

710 Q. I will ask you, Mr. Whitmore, if you made an examination of the condition of the Capital National Bank as disclosed by Exhibit No. X-1048 and compared it with its condition as shown by Exhibit X-987, purporting to be the condition of the bank at the close of business on September 25th, 1891?

A. I have.

Q. You may state what, if any, discrepancies you find in those two statements.

Mr. ROSE: That is objected to by the defendants Thompson and Yates for the reason that it is immaterial; it not appearing that either of said defendants either made, or participated in or permitted the making or publication of any report of the corresponding date; because it is not alleged in the petitions in any of the cases that the defendants made or participated in the making of any report of the condition of the bank on a corresponding date, and because the book itself is not sufficiently proved to entitle it to be received as a book of account under the statutes of this state.

Objection overruled.

Each of the defendants excepts.

Mr. BISHOP: The defendant Hamer objects as immaterial; it not appearing that he either made, participated in or permitted the making or publication of any report of the corresponding date, because it is not alleged in the petitions in any of the cases that the defendants made or participated in the making of any report of the condition of the bank on a corresponding date, and because the book itself is not sufficiently proved to entitle it to be received as a book of account under the statutes of this state.

Objection overruled.

Defendant excepts.

A. I have compared the published statement of the Capital National Bank purporting to be a statement of its condition at the close of business on September 25th, 1891, with the books of the bank showing its condition at the close of business on September 25th, 1891; I find the amount of overdrafts as published \$22,049.52 less than the amount of overdrafts shown by the deposit book; I find the amount of loans and discounts as published to be \$69,006.06
711 more than as shown by the books; I find the amount due from all banks to be \$27,223.67 more than as shown by the books; I find the amount of rediscounts as published to be \$100,000.00 less than as shown by the books; I find the Banking House, Furniture and Fixtures as published to be \$5770.00; the item of Real Estate of \$56,478.20 is not given in the published statement as such. I find the item of Bills of Exchange \$10,794.09 is not given in the published statement as such.

Mr. THOMAS: We now offer in evidence Exhibit No. X-1049, contained in the General Balance book of the Capital National Bank, Identified as Exhibit X-21, purporting to give the condition of the Capital National Bank under the heading of Thursday, December 3, 1891.

Mr. ROSE: That is objected to on behalf of Thompson and the Hamer estate because there is no proof that either one of these defendants ever made or participated in the making of any report of the condition of the bank at or about the date of the column heading; because the petitions do not charge the defendants, or any of the defendants with having made or published any statement of the condition of the bank at a corresponding date; the book itself is not sufficiently proved or established to entitle it to be received in evidence as a book of account under the statutes of Nebraska.

Objection overruled.

Each of the defendants excepts.

Mr. BISHOP: The defendant Yates objects because there is no proof that he ever made or participated in the making of any report of the condition of the bank at or about the date of the column heading; because the petitions do not charge the defendant, or any of the defendants, with having made or published a statement of the condition of the bank on the corresponding date; the book itself is not sufficiently proved or established to entitle it to be received in evidence as a book of account under the statutes of Nebraska.

Objection overruled.

Defendant excepts.

Exhibit, No. X-1049 received and read in evidence.

(Copy on next succeeding page.)

712

EXHIBIT No. X-1049.

THURSDAY, Dec. 3/91.

Capital Stock		\$300,000.00
Surplus a/c		32,000.00
U. S. Bond a/c.....	\$50,000.00	
Premium a/c	868.82	
Circulation a/c		45,000.00
Redemption Fund	2,250.00	
Stock & Bond a/c.....	53,513.49	
Furniture	5,770.00	
B/R	735,474.93	
Cash	44,314.02	
Bills of Exchange	10,583.88	
Chemical Nat. Bank.....	402.45	
Am. Exch. Nat. Bank.....	16,673.83	
U. S. Nat. Bank.....	7,605.55	
South Omaha Nat. Bank.....	1,510.24	
First Nat. Bank, Kans. City.....	224.55	
Schuster Hax Nat. Bank.....	1,588.07	
Blackstone Nat. Bank.....	1,034.78	
Am. Exch. in Europe.....	725.40	
Merchants Nat. Bank, N. C.....		604.46
First Nat. Bank, Beatrice.....	224.28	
Bank of Cass County.....		3.17

Knauth, Nachod & Kuhne.....	193.08	
Continental Nat. Bank, Boston.....	5,155.	
Clearing House a/c		
Walsh & Putnam	2,800.	
Undivided Profits		253.79
Rediscounts a/c		125,196.14
Real Estate a/c	56,572.70	
Taxes Paid a/c	2,512.50	
Discount, Interest & Exchange.....		23,023.10
Wages a/c	6,530.83	
Suspense a/c	46.43	
Interest Paid a/c	14,792.48	
Expense a/c	3,792.17	
Deposit a/c		499,078.82
	<hr/>	<hr/>
	\$1,025,159.48	\$1,025,159.48

713 Q. You may state, Mr. Whitmore, if you have made an examination of Exhibit No. X-1049 purporting to be the condition of the Capital National Bank as disclosed by its general balance book and compared it with Exhibit X-988 purporting to give the condition of the same bank at the close of business on December 2, 1891?

A. I have.

Q. You may state, what, if any, discrepancies you find in those two reports or statements.

Mr. ROSE: Each of the defendants objects because there is no proof that either one of these defendants ever made or participated in the making of any report of the condition of the bank at or about the date named, or the date of the column heading; because the petitions do not charge the defendants or any of the defendants with having made or published any statement of the condition of the bank at the corresponding date, and because the book itself is not sufficiently proved or established to entitle it to be received in evidence as a book of account under the statutes of Nebraska.

Objection overruled.

Each of the defendants excepts.

A. I have examined the published statement of the Capital National Bank purporting to be a statement of its condition at the close of business on December 2nd, 1891, with its books showing its condition at the close of business on December 2nd, 1891. I find the item of overdrafts as published is \$45,623.20 less than the overdrafts shown on the deposit ledger; I find the loans and discounts as published to be \$134,750.79 more than the loans as shown by the books; I find the amount due from all banks as published is \$36,460.29 more than as shown by the books; I find the amount of cash as published is \$30,000 more than as shown by the books; I find the Banking House, Furniture and Fixture and Fixtures as published is \$5,770.00 but the item of Real estate of \$56,572.70 is not published as such; I find the item of Bills of Exchange \$10,-583.88 is not shown or published as such.

714 Mr. THOMAS: We now offer in evidence Exhibit No. X-1050, contained in the Balance book of the Capital National
Objection overruled.

Each of the defendants excepts.

Bank, identified as Exhibit No. X-21, purporting to be the condition of the bank under the heading column, Saturday, December 10, 1892.

Mr. ROSE: Now I object to that on behalf of Mr. Thompson and Mr. Hamer for the reason that there is no proof that either of these defendants ever made or participated in the making of a report of the condition of the bank at the date corresponding with the column heading, also because the date over it is obviously and manifestly not the account which forms the basis of any published report that purports to have been made by any of the officers of the bank; because the petitions do not charge any misrepresentation in any published report for this date, and because the book is not sufficiently authenticated or proved to entitle it to be received in evidence as such under the statutes of this state.

Objection overruled.

Each of the defendants excepts.

Mr. BISHOP: The defendant Yates objects for the reason that there is no proof that he ever made or participated in the making of a report of the condition of the bank at the date corresponding with the column heading, also because the date over it is obviously and manifestly not the account which forms the basis of any published report that purports to have been made by any of the officers of the bank; because the petitions do not charge any misrepresentation in any published report for this date, and because the book is not sufficiently authenticated or proved to entitle it to be received in evidence as such under the statutes of this state.

Objection overruled.

Defendant excepts.

Exhibit No. X-1050 received and read in evidence.

(Copy on next succeeding page.)

715

EXHIBIT No. X-1050.

SATURDAY, Dec. 10/92.

Capital Stock	300,000.00
Surplus a/c	6,000.00
U. S. Bond a/c	50,000.00
Circulation a/c	45,000.00
Redemption Fund	1,350.00
Stock & Bond a/c.....	325.00
Furniture a/c	5,770.00
B/R	687.693.01
Cash	44,848.45
Bills of Exchange	2,591.31
Chemical Nat'l Bank.....	41,924.17

Am. Exch. Nat'l Bank.....	4,513.70	
U. S. Nat'l Bank, Omaha.....	29,880.78	
South Omaha Nat'l Bank.....	858.03	
Packers Nat'l Bank.....	194.27	
First Nat'l Bank, Kansas City....	719.15	
Schuster Hax Nat'l Bank.....	808.—	
Blackstone Nat'l Bank.....	389.57	
Merchants National Bank	1,038.74	
First Nat'l Bank, Beatrice.....	1,264.27	
Bank of Cass County		1.74
Knauth, Nachod & Kuhne.....	237.62	
Clearing House a/c.....		
Walsh & Putnam	2,800.—	
Undivided Profits		26.81
Rediscount a/c		34,054.38
Real Estate	110,352.04	
Discount, Interest and Exchange..		19,905.68
Wages a/c	7,159.98	
Suspense a/c		1,432.—
Interest Paid a/c.....	1,356.25	
Expense a/c	5,872.93	
Deposit a/c		605,529.66
	<u>1,011,950.27</u>	<u>1,011,950.27</u>

716 Q. I will ask you if you have made an examination of Exhibit No. X-1050, being the Balance book of the Capital National Bank showing its business under the head of December 10th, 1892, and being actually at the close of business December 9th, 1892, and compared it with the published report purporting to give the condition of the business at the close of business December 9th, 1892?

A. I have.

Q. You may state what, if any, discrepancies you find in those two statements.

Mr. ROSE: Now I object to that on behalf of Mr. Thompson and Mr. Hamer for the reason that there is no proof that either of these defendants ever made or participated in the making of a report of the condition of the bank at the date corresponding with the column heading referred to; also because the date over the column is obviously and manifestly not the account which forms the basis of any published report that purports to have been made by any of the officers of the bank, and because the petition does not charge any misrepresentation in any published report for this date, and because the book itself is not sufficiently authenticated or proved to entitle it to be received in evidence as such under the statutes of this state.

Objection overruled.

Each of the defendants excepts.

Mr. BISHOP: The defendant Yates objects for the reason that

there is no proof that either of these defendants ever made or participated in the making of a report of the condition of the bank at the date corresponding with the column heading referred to; also because the date over the column is obviously and manifestly not the account which forms the basis of any published report that purports to have been made by any of the officers of the bank, and because the petition does not charge any misrepresentation in any published report for this date, and because the book itself is not sufficiently authenticated or proved to entitle it to be received in evidence as such under the statutes of this state.

Objection overruled.

Each of the defendants excepts.

717-724 A. I have examined the published statement of the

Capital National Bank purporting to give a statement of the condition of the bank at the close of business on December 9th, 1892 with the books of the bank showing its condition at the close of business on December 9th, 1892, and find that the overdrafts as published are \$13,175.31 less than the amounts shown by the deposit ledgers; I find the amount of loans and discounts as published is \$80,905.43 more than as shown by the books; I find the amount due from banks as published is \$46,356.76 more than as shown by the books; I find the amount of cash as published is \$14,565.48 more than as shown by the books; I find the amount of Bills of Exchange \$2,591.31 is not shown in the published statement as such; I find the amount of rediscounts as published to be \$25,000.00 more than as shown by the books; I find the Banking House, Furniture and Fixtures given as \$5,770, which is correct, but the item of other real estate and mortgages owned \$38,617.92 as published, is \$71,734.12 less than the amount of real estate as shown by the books.

I desire to state to the court that since Mr. Rose has called my attention to the pencil memoranda which I find does occur at or near the bottom of a column,—sometimes it is the column of the particular day for which the report purports to have been issued, but these pencil figures, if they refer to anything, refer to a computation of the amount of deposits in the bank; they have nothing whatever to do with the making up of a statement of the condition, other than arriving at the amount of deposits, by adding the amount of overdrafts to the deposits as shown.

* * * * *

725 Mr. NORVAL: It is understood that all of the exhibits attached to the depositions which were read in evidence with your objections, were introduced in evidence. I didn't take the time to read them to the court.

Mr. ROSE: That was my understanding.

The COURT: Yes, sir.

Mr. THOMAS: We offer in evidence Exhibits commencing with No. 147 to and including 923½, being the certificates of deposit of the Capital National Bank, which were outstanding and unpaid at the time of the failure, and in addition to that we ask leave of

court to substitute for these original certificates a schedule giving the date of their issuance, the numbers, to whom issued and the amount, and such other notations as the certificates contain. I will state that there is a schedule of that kind attached to the Bill of Exceptions in the former trial at page 865,—the schedule referred to containing eight sheets, written on both sides.

Mr. ROSE: Each of the defendants objects to each of the exhibits as incompetent, irrelevant and immaterial, and not binding upon any of these defendants, each of them purports to be outstanding and were not in the bank and wouldn't import any knowledge or notice to anyone other than those issuing them as to their amounts.

The COURT: The objections will be overruled, and leave will be granted to substitute a schedule instead of the original certificates and the schedule instead of the original documents will be read in evidence.

Each of the defendants excepts.

Schedule offered is received and read in evidence. (See next page for copy.)

(Here follow sheets 1 to 14, schedule offered in evidence, appearing at page 727.)

CHARTS

TOO

LARGE

FOR

FILMING

728 H. T. JONES recalled:

Direct examination.

By Mr. THOMAS:

Q. Mr. Jones, what has been your occupation for the past twenty, twenty five or thirty years?

A. Banking business, principally.

Q. When did you begin the banking business?

A. In November, 1883.

Q. With what institution did you begin?

A. The Jones National Bank.

Q. Of Seward?

A. Seward, Nebraska?

Q. In 1883?

A. Yes, sir.

Q. How long were you connected with that bank as cashier?

A. I was cashier up until '96, and then President after that time.

Q. Until,—that is you were president from '96 until when?

A. Until 1908, in November.

Q. That is, from 1883 to 1908 you were either cashier or president of the Jones National Bank?

A. I was.

Q. In 1908 did you sever your connection with the bank?

A. I did.

Q. Both as officer and stockholder?

A. I did.

Q. What has been your experience in bookkeeping?

A. I have had considerable experience.

Q. And are you conversant with the manner of keeping books of account for banks and similar institutions?

A. I think so.

729 Q. Referring now particularly to the books that have been in court during the progress of this trial, referred to as the books of Marsh Brothers, Mosher & Company, the Marsh National Bank and the Capital National Bank,—have you made an examination of those books from time to time?

A. I have.

Q. And when did you begin to make examinations of them?

A. January 23rd, 1893; I want to say that I didn't make an examination of the books that day, but looked over several of them.

Q. You may explain how you happened to be looking at the books that day.

A. We received a telegram early Monday morning, on January 23rd, 1893, that the Capital National Bank was closed and in the hands of the examiner, and it happened that it came just in time that I could catch the 9 o'clock train, and I jumped on the train and went to Lincoln; the doors were closed and it was in the possession of Mr. Griffith, the National bank examiner, and I went to the side door and rapped and he let me in.

Q. You say Griffith was then in possession of the bank and of the books on January 23rd?

A. Yes, sir.

Q. When was he succeeded by a Receiver?

A. I think sometime in February, 1893, by Mr. Macfarland.

Q. Do you know about how long Mr. Macfarland had charge of the bank?

A. Two or three months, and he was succeeded by Kent K. Hayden.

Q. How long was Mr. Hayden receiver of that bank?

A. In the summer of 1896—1898 it was,——

Q. That is, that Mr. Hayden died, you think?

A. Yes, sir.

Q. He was succeeded by whom?

730 A. Mr. McDonald.

Q. J. W. McDonald?

A. Yes, sir.

Q. And he remained as receiver until the affairs were wound up?

A. He did.

Q. At the time you saw the books when Mr. Griffith had charge, was your attention called to any entries on the books?

A. Yes, sir.

Q. Do you remember what entries they were?

A. There was the overdrawn collection account; the loss of Donnell, Lawson & Simpson, and the State Treasurer account were the principal ones.

Q. Did he show you a credit of \$100,000 to the account of the state treasurer?

A. That was part of it.

Q. When did you examine the books after that?

A. At various times; I couldn't give the dates.

Q. Did you examine them while Mr. Hayden was receiver?

A. I did, several times.

Q. About how many days do you think you spent on the books while Mr. Hayden was in possession of them?

A. Probably thirty.

Q. And did you spend any time examining the books while Mr. McDonald was receiver?

A. I did.

Q. How much time did you spend on them during his Receivership?

A. Oh, eight or ten days; something like that.

731 Q. And I think you said when you were on the stand before that you were present when the deposition of Mr. McDonald was taken?

A. I was.

Q. The depositions that have been read in evidence?

A. Yes, sir.

Q. And also the depositions of Mr. Outcalt and Hale and others?

A. I was present when they were all taken.

Q. And you were there when they identified these books that have been referred to in this trial?

A. I was.

Q. Who was the notary before whom the depositions were taken?

A. Mr. Ricketts.

Q. And you were there when Mr. Ricketts identified and put his mark of identification on each of the books and documents that have been referred to in the trial of this case?

A. I was.

Q. And did you take these books from the bank—were you there when the books were taken out of the possession of the receiver and brought to Seward?

A. I was.

Q. And have you examined the books during the progress of this trial so you can state whether they are the same books identified in the depositions taken before Mr. Ricketts when the identification marks were placed thereon by Mr. Ricketts and saw him put it on them and know whether they are the same books?

A. I have examined the books and records, and they are the same books and records.

Q. That is you mean the books in court now are the same books identified by Mr. Outcalt and Hale and other witnesses, whose depositions were taken before Mr. Ricketts?

A. Yes, sir.

Q. Who was with you when you examined the various books, accounts and documents and records?

A. Where do you mean?

Q. Who was with you at some of the times when you examined the books during the receivership of Mr. Hayden?

A. No one, with the exception of you, that I remember.

Q. And was anyone with you when you examined them during the receivership of Mr. McDonald?

A. Yes; Mr. Whitmore, Mr. Barkley, J. J. Thomas, R. S. Norval and L. C. Burr.

Q. I hand you, Mr. Jones, Exhibit No. X-1056, which purports to be a photographic copy of a certificate of deposit No. 17969 for \$40,000 issued to Mr. Willard, Treasurer, and I will ask you to state if you ever saw the original of which this is a photographic copy?

A. I did.

Q. And where was it when you saw the original?

A. First in the hands of Receiver Hayden, and afterwards saw in the possession of receiver McDonald.

Q. And who had it photographed?

A. I did.

Q. And is this Exhibit X-1056 a correct photographic reproduction of the certificate of deposit as you saw it in the hands of the receiver?

A. It is.

Q. What effort did you make, if any, to get the original for use in the trial of this case?

A. I tried to have receiver McDonald produce it, and he failed to do so.

733 Q. Did you make a search for it among the documents and papers of the Capital National Bank that were in the possession of the receiver?

A. I did.

Q. Did you make a diligent search?

A. I tried pretty hard to find it.

Q. And failed to find it?

A. Yes, sir, it couldn't be found.

Q. Could Mr. McDonald find it?

(No answer.)

Q. After you had it photographed what did you do with the original?

A. Returned it to Mr. McDonald, together with a number of others.

Q. That is, you had a number of others photographed at the same time?

A. Yes, sir.

Q. And this one, Exhibit X-1053, the original of that was returned with the other certificates you had photographed?

A. It was.

MR. THOMAS: We offer in evidence Exhibit No. X-1056.

Exhibit No. X-1053 received in evidence. (See following page.)

734

EXHIBIT X-1056.

\$40,000.00.

Capital National Bank,

Lincoln, Neb.

Apr. 28, 1888.

C. H. Willard, Treas., has deposited in this Bank Forty Thousand Dollars payable to the order of self on return of the Certificate properly endorsed.

No. 17969. Not subject to check.

C. W. MOSHER, *Pt.*

Interest at ——— if left ——— months.

Paid Jan. 1, 1889, Capital National Bank, Lincoln, Nebraska.

Paid Dec. 31, 1888, Capital National Bank, Lincoln, Nebraska.

[Endorsed:] X-1056. O. P. H.

Exhibit No. X-1056.

735 Q. Did you observe, Mr. Jones, in the original, of which Exhibit No. X-1056 is a copy, any endorsement on the back of it?

A. It was not endorsed.

Q. Did you observe?

A. Yes, sir, or I wouldn't have said so.

Q. Now, Mr. Jones, have you examined the books that you found that related to the affairs of Marsh Brothers, Mosher & Company?

A. I have.

Q. And did you examine the ledger of that concern?

A. I did.

Q. You may state, if you are able to, what was the amount of the purported capital stock of Marsh Brothers, Mosher & Company as disclosed by their books?

A. \$100,000.

Q. At what time did the Marsh Brothers, Mosher & Company commence to do business and cease as shown by the books of that institution?

A. January 1882 as shown by ledger 1.

Q. And when did they close business, or cease doing business.

A. On June 29, 1883 it merged into the Marsh National Bank as shown by record book, pages 18 and 30, and ledger One of the Marsh National Bank.

Q. And at the time you say it merged into the Marsh National Bank, what was the purported capital stock of the Marsh National Bank?

A. The same, \$100,000.

Q. Did you compare the books of the Marsh National Bank with the books of Marsh Brothers, Mosher and Company to see in what manner the transfer or merger was made?

A. I did.

Q. And what did you find?

736 Mr. ROSE: Each of the defendants objects as no foundation laid; the witness not qualified, and incompetent, irrelevant and immaterial.
Objection overruled.

Each of the defendants excepts.

A. When the Marsh National Bank organized, they got a new set of books, and the accounts from Marsh Brothers, Mosher & Company were balanced and transferred into the new set of books of the Marsh National Bank.

Q. That is the accounts that were on the ledger of Marsh Brothers, Mosher & Company were simply transferred to the Marsh National Bank?

A. All accounts were transferred from the old set of books to the new ones; that would apply to the full line of books.

Q. And did you examine the Journal of the Marsh National Bank, commencing with the time that it commenced business as a national bank?

A. Yes, sir.

Q. And was there any entry on that Journal when the shift was made from Marsh Brothers, Mosher & Company to the Marsh National Bank?

A. No, sir, there wasn't.

Q. What does the entry of the first day of the opening of the Marsh National Bank show, so far as the Journal is concerned?

A. I don't know.

Q. I mean does it show the current business of that day?

A. Certainly.

Q. But nothing with reference to a transfer of assets?

A. No. As I said there is nothing on the Journal to show a transfer of the assets; simply a transfer of the accounts from the old bank,—transferred to the books of the new bank.

737 Q. And when the change was made from the Marsh National Bank to the Capital National bank, what did they do then with reference to opening up new books?

Mr. ROSE: Each of the defendants objects as the witness is not qualified; no foundation laid, and it is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. When the name was changed from the Marsh National Bank to the Capital National Bank they again got a new set of books and the accounts of the Marsh National Bank were transferred to the books of the Capital National Bank.

Q. What day was that transfer made?

Mr. ROSE: Each of the defendants objects as the witness is not qualified; no foundation laid, and it is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. The old books show May 31, 1884.

Q. You mean the old books of the Marsh National Bank?

A. Yes, sir.

Q. And the new ones, when it took the name of the Capital National Bank, what date was that?

A. Under date of June 2nd, 1884; the difference in date is on account of Sunday.

Q. What was the purported capital stock of the Marsh National Bank during its existence?

A. \$100,000.00.

Q. Was there any change in the capitalization when the name was changed to the Capital National Bank?

738 A. Yes, sir.

Q. What changes were made then?

A. Increased to \$200,000.00.

Q. To take effect when?

A. June 1st, 1884.

Q. And was there afterwards any further increase in the capital stock of the Capital National Bank?

A. Yes, sir.

Q. When and for what amount?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and the witness not qualified.

Objection overruled.

Each of the defendants except-.

A. June 2nd, 1886, the capital stock was increased to \$300,000, as shown by record book, page 42, and ledger "A" page 1, Journal "A" page 592.

A. And were there any further changes made in the purported capital stock of the bank up to its failure?

A. No, sir, there wasn't.

Q. Now in speaking of the transfer of assets of Marsh Brothers, Mosher & Company, which became the Marsh National Bank, were all the accounts correctly transferred?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid, and not the best evidence. Objection overruled.

Each of the defendants excepts.

A. They were not.

Q. In what respects and regards were they incorrectly transferred?

A. Ledger "A", page 488, Marsh Brothers, Mosher & Company shows a collection account overdrawn \$14,573.32, and this account was transferred to Ledger "1", page 617 of the Marsh National Bank as Collection Account of Marsh Brothers Mosher and Company as \$14,573.32. It was transferred to the Balance book of Marsh National Bank as \$4,573.32. This account was reduced from \$14,573.32 to \$4,573.32 by erasing the figure "1" in the tens of thousands column, and prefixing the figure "1" in the tens of thousands column to the account of the Omaha National Bank, thereby reducing Collection Account ten thousand dollars and increasing the account with the Omaha National Bank by ten thousand dollars.

Q. Now were those erasures to which you refer,—where do they appear,—are they apparent on the books that are in court?

A. They are.

Q. Under what date?

A. The erasures and change shows on Balance book, July 2, 3 and 5.

Q. Now were there any entries upon the Journal for that time that would justify any of these charges or changes?

Mr. ROSE: Each of the defendants objects as no foundation laid; the witness not qualified, and as incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. There were no entries on the Journal to justify those changes.

Q. You examined to see?

A. I did.

Q. The fact that there are no journal entries justifying this change in the Collection account, or in the bank account what would that indicate?

740 Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. There could be no changes on those accounts unless it was shown by the journal, unless they were fraudulent changes.

Q. Now Mr. Jones, you may state, what is the nature of a collection account, and could a collection account, honestly kept, be overdrawn, and properly carried as an asset of the bank?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. A collection account is usually understood as where *that* you collect money, and when collected it is credited to an account until you make the remittance to the party from whom you got the collection, and a collection account therefore, if honestly kept, could not be overdrawn.

Q. As it is carried on the books of the bank, does it purport to be an asset?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. It does.

Q. Now with reference to these two accounts to which you have testified that were changed, I will ask you if the Balance book agreed with the ledger account?

741 Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; the witness not qualified, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. It did not.

Q. In what respect did it disagree?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; the witness not qualified, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. It was transferred to the General Balance book ten thousand dollars short, and the Balance book and the ledger account was—there was a difference of ten thousand dollars until the 5th of July when the General Balance book was made to agree with the ledger account.

Q. The fact that these accounts were kept in the manner you

have suggested, with this ten thousand dollar item of the Collection account eliminated as you say by the use of a knife what would you say,—what would be your opinion as to whether or not that was a valuable asset or otherwise?

Mr. ROSE: Each of the defendants objects as the witness is not qualified as to the value of any asset.

Objection overruled.

Each of the defendants excepts.

A. I have two reasons. My first is because it was eliminated from the account by the use of a knife; secondly there is a charge to the Omaha National Bank on the same day of \$10,000.00 which was a fictitious charge.

742 Q. And does the fact that it purports to be an overdrawn collection account affect your opinion in any way?

Mr. ROSE: Each of the defendants objects as cross examination of the witness.

Objection overruled.

Each of the defendants *objects*.

A. Certainly.

Q. And were those changes on the book obvious to anyone, Mr. Jones?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and not shown to have any connection with any of these defendants.

Objection overruled.

Each of the defendants excepts.

A. They are.

Q. Now were there any other accounts that were incorrectly transferred?

Mr. ROSE: Each of the defendants objects as no foundation laid; the witness not qualified, and incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. The Stock & Bond account of \$30,540.

Q. In what way was that incorrectly transferred?

Mr. ROSE: Each of the defendants objects as no foundation laid; the witness not qualified and it is incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

743 A. Ledger No. "1", page 639 of Marsh Brothers, Mosher & Company shows on July 2, 1883 as \$30,540.00. This was transferred to Ledger "1", page 7 of the Marsh National Bank as \$540., and to the General Balance book as \$540.00.

Q. Did you examine the books of the Marsh National Bank to

ascertain if there had been any erasures of changes in that account?

A. Yes, sir, the erasure showed daily for some time and under date of July 9th they forgot to erase the cypher in front of the figure "5"; on July 24th the figure "3" is only partially erased.

Q. And do you know for how many days those erasures occur on that book?

A. No, I don't remember now, but for a number of days. I have carried it here from the 2nd to the 24th.

Q. What year was that?

A. 1883.

Q. In the month of July?

A. Yes, sir.

Q. And did the journal which corresponds to the dates to which you have referred show any entry that would justify the reduction of the Stock & Bond account to the extent of \$30,000?

A. Nothing on the journal to authorize the change of \$30,000.

Q. Now were there any other accounts that were incorrectly transferred?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid; not the best evidence, and the witness not qualified.

Objection overruled.

Each of the defendants excepts.

744 A. Yes sir, the Bills Receivable account. On June 30th, 1883 it shows \$248,029.33. It was transferred to Ledger "1" page 15 of the Marsh National Bank as \$278,029.33; Balance book is \$278,029.33, an increase in this account of \$30,000, and nothing on the Journal to show the increase of thirty thousand dollars.

Q. Does the fact, Mr. Jones, that this Stock & Bond account appears decreased to the extent of \$30,000, in the manner you have stated, and the Bills Receivable account shows an increase of \$30,000 in the manner you have stated, and the further fact that in neither case is this entry justified by any entry on the journal,—what would you say was the nature of the transaction, if there was any legitimate transaction justifying those changes?

A. In my opinion it was a fraudulent transaction, not only for the reason that it was changed this \$30,000., but this account was made up of stocks in the various Marsh companies as shown by Ledger "1" of Marsh Brothers, Mosher & Company at page 639, which shows this account to be as follows: January 6th, 1882 \$7500. April 21, 1882, \$7500.00. July 24th, 1882 \$7500.00 and December 29th, 1882 \$7500., or a total of \$30,000. And the following credits April 21, 1882, Ledger "1" page 9 shows Marsh Binder Company credited \$26250.00, and Ledger "1" page 8, C. W. & W. W. Marsh was charged with \$18,750. This difference of \$7500.00 is charged to the Stock & Bond account. On July 24th, 1882 Ledger "1", page 6

745 shows Marsh Harvester Company credited with \$7500. December 29th, 1882, Ledger "1" page 6 shows Marsh Harvester Company again credited with \$7500. and on December 27th 1886, Journal "B", page 188 shows a credit to this account of \$9300.

and the books show on this date a note of Donnell, Lawson & Simpson taken for \$9300.

Q. From your examination of the books, and your knowledge of banking what would you say that this \$30,000 item that was carried in the Stock & Bond account before the transfer was a valuable asset or otherwise?

A. It was not.

Q. Now I will ask you if you examined the books of the Marsh National Bank to ascertain if during the existence of the bank under that name it carried an account with Donnell, Lawson & Simpson?

A. It did.

Q. And was that account closed out at any time?

A. It was.

Q. When was the account closed out, and what was the amount at which it was carried immediately prior to its close?

A. May 19th, 1884 the Chemical National Bank was charged with \$10,000. May 19th, 1884 Donnell, Lawson & Simpson's account was credited \$10,000. This is found in Journal "A" Marsh National Bank at pages 532-3, Ledger "1" of the Marsh National Bank, page 159. On May 26th, 1884 the Commercial National Bank of Chicago is charged with \$10,000. May 26th, 1884 Donnell, Lawson & Simpson is credited with \$10,000. This may be found in Journal 9, Marsh National Bank, pages 544 and 5 Ledger "1"

Marsh National Bank, page 159. May 27th, 1884 note of 746 C. W. Mosher, No. 5629 was put in the bank for \$8174.70 and May 27th, 1884 the account of Donnell, Lawson & Simpson is credited and marked "To balance account" \$8174.70.

Q. Did you examine to see whether there were any erasures in the account of Donnell, Lawson & Simpson?

A. I did.

Q. State what they were.

A. May 9th, 1884 Balance book shows erasure in account of Donnell, Lawson & Simpson in the tens of thousands column each day from May 7th, 1884 to May 19th, 1884, and on May 19th this account was credited with \$10,000 and made to balance with the ledger account.

Q. Did you examine the books of the Capital National Bank to ascertain if any notes, Bills receivable of Donnell, Lawson & Simpson, purport to have been taken into the bank and entered as a part of its assets?

A. I did.

Q. You may state what that examination disclosed.

A. October 14th, 1884, Journal "A" Capital National Bank shows as follows: Donnell, Lawson & Simpson note, No. 6841a taken for \$5084.76. On the same day another note for \$695.79 No. 747 6842a. May 7th, Journal shows notes of Donnell, Lawson & Simpson taken as follows: No. 8448a \$9391.56. N. 8449a for \$9391.57. On July 20th, Journal "A" shows note of Donnell, Lawson & Simpson taken, No. 9133a for \$9391.57. July 24th, 1885, the Journal shows a note of Donnell, Lawson & Simpson taken, No.

9157a for \$9391.56. August 13th, 1885, Journal "A" shows a note of Donnell, Lawson & Simpson taken, No. 9356a for \$10200.00 and on the same day another note, No. 9357a for \$20,300.00.

Q. Now referring to this date, do you mean that the books show they entered and became a part of the purported assets of the bank?

A. Yes sir, each of those notes were charged to the account of Bills Receivable.

Q. Now do the books of the bank indicate that those notes were paid at divers times?

Q. If so you may state what they show in that behalf.

A. They do. August 13th, 1885, Journal "A" page 744 of the Capital National Bank shows the following notes marked paid:

No. 9157a, Donnell, Lawson & Simpson	\$9391.56
No. 9133a,	9391.57
No. 6841a	5084.76
No. 6842a	5084.76

Total notes of Donnell, Lawson & Simpson marked paid that day \$28,952.66. The Journal shows taken on the same day notes of

Donnell, Lawson & Simpson as follows: No. 9356a for 748 \$10,200.00 and No. 9357a for \$20,300.00 Total notes taken by the bank that day \$30,500. The difference in the two amounts was account of interest.

Q. Was there a credit to the account of interest?

A. Yes sir. December 28th, 1885, Journal B, page- 230 and 231 shows the following notes paid.—No. 9357a, Donnell, Lawson & Simpson \$20,300. Bills Receivable credited with this amount and the Chemical National Bank of New York charged with the same amount, \$20,300. July 13th, 1885 shows, No. 8448a for \$9391.56 was paid. The same date shows a note, No. 8449a for \$9391.57 paid. On March 3rd, 1886 it shows No. 9356a credited with \$5200.

Q. Now you may state if on the books of the Capital National Bank was carried an account, as an apparent asset, which was known as Bills of Exchange account.

A. There was.

Q. Have you examined that account and traced it through from time to time to ascertain the nature of the account and what sort of transactions entered into it?

A. To a certain extent I have.

Q. Now were there any entries made in that account along in October, 1885?

A. Yes, sir.

Q. You may state what you found with reference to that account at that time.

A. October 23rd, 1885, Journal B, pages 102 and 3 shows Bills of Exchange account charged \$16,614.47, and on the same day

Marsh Brothers, Mosher & Company credited with \$16,614.47.

749 Q. And do you find any entry to that account on November 4th, 1885?

A. I did.

Q. State what that entry is.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid, and the witness not qualified. Objection overruled. Each of the defendants excepts.

A. November 4th, 1885, Journal B, pages 128 and 9 shows the account of C. W. & W. W. Marsh charged \$14,000, but this on the ledger account is charged to Marsh Brothers Mosher & Company's Collection account, on Ledger "A", page 622. On the same day the Bills of Exchange account is credited with the same amount, \$14,000.

Q. Did you find any entries in that account under date of December 14th, 1885; if so state what they are.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial. Objection overruled. Each of the defendants excepts.

A. Journal B, pages 204 and 5, December 14th, 1885 shows the Bills of Exchange account charged \$29,968, and on the same date the following notes marked paid:

No. 10418 Marsh	.....	\$4,868.	
No. 10461 Marsh	.....	5,000.	(\$5,000.00)
No. 10475 Marsh	.....	2,500.	
No. 10502 Marsh	.....	2,500.	
No. 10511 Marsh	.....	5,000.	
No. 10519 Marsh	.....	3,600.	
No. 10525 Marsh	.....	2,000.	
No. 10521 Marsh	.....	2,000.	
No. 10529 Marsh	.....	2,500.	
A total of		.....	\$29,968.

Q. Now are there any further entries to that account that you have found and want to testify to?

750 A. Yes sir.

Q. What is the next one?

A. July 20th, 1886, Journal B, pages 636 and 7 shows notes taken and charged to Bills Receivable in the amount of \$46,853.56. Of this amount the following forged notes were included:

No. 18775 F. S. Johnson & Co.	.....	\$9,968.
No. 19947 First National Bank, Hastings	.....	10,000.
No. 20613 First Nat'l Bank, Kearney	.....	10,000.
Total	.....	\$29,968.00

And on July 29th, 1886 Bills of Exchange account credited \$10,000.00 and the books show that the accounts of F. S. Johnson & Co., received no credit, neither does the First National Bank of Hastings, nor the First National Bank of Kearney on account of these notes.

Q. That is, when these notes appear to have been taken in the bank?

A. Yes, sir. The books of the bank further show that no interest was received on these notes.

Q. What is the nature of a Bills of Exchange account, and what was the nature of this account, so far as you can determine from the entries that have been made here?

A. A Bills of Exchange account is an account kept by a bank in which they enter cash items which could not properly be sent to their correspondents for their credit, and so forth. Then they are collected and sent direct to the bank,—we will say, on which they are drawn, and when that bank pays them and remits then they are credited back to this Bills of Exchange account; this account

751 has many legitimate charges of that kind.

Q. That is, Mr. Jones, it would consist largely of instances where checks and things of that character would be brought into the bank on banks with which they had no account,—usually in small items wouldn't it?

Q. You may state more fully the nature of that account, and what sort of items largely enter into it.

A. There would be items that a banker would call cash items, such as checks or orders. So you will get my idea more clearly, suppose that the Jones National Bank would send them a check on a bank at Beaver Crossing; the Capital National had no account with the bank at Beaver Crossing. Now they would send that direct to the bank at Beaver Crossing for collection and remittance; the bank at Beaver Crossing would charge that check to its customer's account, draw a draft and send that to the Capital National, who would then credit this Bills of Exchange account.

Q. What would be the size of the items that would ordinarily enter into such an account?

Q. Now you may state if from your examination of this account known as Bills of Exchange and carried on the books of the Capital National bank, if this account was such a one as you have

752 described or defined.

Q. I will ask you, Mr. Jones, to state what sort of items entered into this account, as shown by an examination of the books.

A. The books show that this account received credits which were not properly charged against the account as I have testified to.

Q. Well from an examination of the account, and tracing it through at various times what was that account used for in many instances, if you can tell, as shown by the books themselves?

A. In a number of instances it was used to cover up transactions.

753 A. Such as on October 23rd, 1885 there was a charge of \$16,614.47, and this same amount was credited to Marsh Brothers Mosher & Company. Again on November 4th, 1885, there was a charge of \$14,000 which did not belong to that account, and on December 14th, 1885 there was a charge of \$29,968.00 and you will find numerous charges of that nature all through the account.

Q. Did you find instances where the account received credit on account of items that were not valuable assets?

A. Yes, sir.

Q. State some of them.

A. October 14th, 1885 it received credit of \$14,000, and then there is the credit of \$29,968 to that account for those forged notes, July 20th, 1886.

754 Q. Referring there to a credit of \$29,968 on account of three fictitious notes aggregating that amount. Have you examined the books to ascertain the history of those notes as they appear on the books; I refer to the Johnson notes.

A. Yes, sir. I have examined as to when they were received and paid, and so forth.

Q. Now what do the books show as to the Johnson note?

A. The books show that the Johnson note was received on July 20th, 1886 by the Capital National Bank and entered into the Bills Receivable account for \$9968. The books show that this note was marked paid on the books of the bank as follows: \$2,000.00 on September 21st, 1886, Journal B, page 756, and \$7,768 was paid in September 27th, 1886 as found in Journal B page 770. \$200.00 paid September 28th, 1886, found in Journal B, page 772.

Q. Now with reference to the note of the First National Bank of Hastings, what do the books show?

A. The books show that this note was received by the Capital National Bank on July 20th, 1886 and entered into the Bills Receivable account and assets of the Capital National Bank as \$10,000. And the books show on November 29th, 1886, Journal C page 126, that this note was marked as paid, \$10,000.

755 Q. And with reference to the First National Bank of Kearney note?

A. The books show that the Capital National Bank received that note on July 20th, 1886 and it entered into the Bills Receivable account and assets of the Capital National Bank as \$10,000. Journal C, page 202 shows that this note was marked paid December 23rd, 1886 to the amount of \$2,500, and Journal C page 202, on January 3, 1887 shows that this note was credited with \$7,500., but under the name of Marsh; not under the name of the First National Bank of Kearney.

Q. Now Mr. Jones, on the dates that payments appear to have been made, or are shown to have been made on these notes, the three to which you have just testified, do the books show any charge against any of the proper makers, that is, F. S. Johnson & Company, The First National Bank of Hastings, or the First National Bank of Kearney?

A. The books show that there were no charges to either of these accounts.

Mr. ROSE: Did the books show that these three makers had accounts on the books of the Capital National Bank?

A. Yes, sir.

Q. Do the books of the bank disclose that any interest was received on any of these three notes at the time payments purport to have been made?

A. The books show that no interest was received on these notes, either on the date they were made or on the date of payment.

Q. Now, Mr. Jones, have you made an examination of some of the items that entered into and were a part of the apparent or purported assets of the Bank,—the Marsh National Bank at the time they changed its name and it became the Capital National Bank?

756 A. I have made a schedule and a list of losses that the bank sustained up to the close of business May 31, 1884, when it changed its name from the Marsh National Bank to the Capital National Bank.

Exhibit "00" identified.

Q. Is exhibit "00" which I hand you the schedule to which you refer?

A. It is.

Q. And was that compiled by you from the examination of the books, and what was shown to be the assets at divers times up to that date?

A. It was.

MR. THOMAS: We offer Exhibit "00" in evidence.

Exhibit "00" received and read in evidence. (Copy on next page.)

757

EXHIBIT "00."

The Start of Capital National Bank.

May 31, 1884. The Marsh National Bank ceased, by changing its name to the Capital National Bank, and the following is a partial list of its losses up to that date:

Donnell, Lawson & Simpson account.....	\$28,174.70
Collection account—Marsh Bros. Mosher & Co.	14,578.32
Stock & Bond Account.....	30,000.00
Sycamore Marsh Harvester Co. Note No. 4268a.....	1,500.00
C. W. & W. W. Marsh, Note 4369a.....	5,000.00
Marsh Binder Co. Note 4565a.....	5,000.00
Sycamore Marsh Harvester Co. Note 4883a.....	2,500.00
March,—Note No. 5018a.....	1,000.00
Marsh Binder Co. Note 5061a.....	2,500.00
C. W. Mosher, Note 5063a.....	5,233.33
Marsh Harvester Co.—Note 5082a.....	1,541.
Marsh Binder Co. Note 5419a.....	5,000.00
C. W. Mosher,—Note 5468a.....	200.00
Marsh Binder M'fg. Co. Note 5543a.....	2,500.00
Marsh Note 5552a.....	2,000.00
C. W. Mosher—Note 5610a.....	1,412.50
C. W. Mosher,—Note 5629a.....	8,174.70
C. E. Tuerk,—Note 5664a.....	3,225.67
Total losses	\$119,540.22
Capital at that date was.....	100,000.00
Losses exceeded capital by.....	\$19,540.22

758 Q. In compiling that statement have you taken into consideration Bills Receivable which were carried as assets of the Marsh National Bank that consisted of paper, Bills Receivable, that had been floated by the Marsh Harvester Company, and the binder company,—that is notes that had been given to the Marsh companies for machinery, and so forth, and were held by the bank at this time as Bills Receivable?

A. No sir, that list doesn't contain any of the notes given to the Marsh companies for machinery at all.

Q. What amount does the books show the bank carried as bills receivable on the day it became the Capital National Bank?

\$386,853.59.

Q. Have you examined the books of the Marsh National Bank and the Capital National Bank to ascertain as to whether or not there were any credits entered to the account of Interest Paid?

A. I have.

Q. Have you prepared a schedule showing such credits?

A. I have prepared a schedule showing credits to this account other than at the time they were charged out at the dividend periods.

Q. You may explain to the court the nature of this account as it is shown by the books themselves.

A. The Interest Paid account of a bank is an expense account made up of amounts which the bank pays its customers on
759 certificates of deposit or on daily balances.

Q. How was that account treated; how is it expunged, or ever charged off?

A. At the dividend period it would be credited with the amounts paid out,—or in other words balanced out at the dividend period, then it would start in as a new account, and run along until the next dividend paying period, and then it would again be balanced out.

Q. Do you wish to be understood as saying that this Interest Paid account is charged up against the gross profits of the bank?

A. Well yes,—just whichever way you want to state it; you can say it is charged up against an undivided profit or you can say it is credited to that account.

Mr. ROSE: The difference between the two makes the net profit?

A. Yes sir.

Q. It is carried on the books as a debit account?

A. It is an expense account.

Q. Does it represent any asset of value?

A. No. It is simply a record of the amount of money which has been paid out on that account.

Q. Now how can credits properly be made to that account?

A. At the dividend period.

Q. And if that account received a credit that is not charged against gross profits in any way, would that be a proper credit?

A. I should say not.

Q. Well why not?

760 A. Because as I stated, it is an account which shows the amount of money which has been paid out to the customers,

and couldn't receive a credit only at dividend periods, providing it was a legitimate credit.

Q. And then the credit it did receive would have to be charged against the gross earnings of the bank?

A. Yes, sir.

Q. Have you examined this account to see if this account received credits that were not so charged and were not deducted from the gross earnings of the bank?

A. I did. I made a schedule of the various amounts I have found credited to this account which was not charged to the gross earnings of the bank. It dates from December 29th 1884 to May 4th, 1892, making a total of \$90,916.44.

Q. You may have the reporter identify that schedule as Exhibit "pp."

(Exhibit so identified.)

Q. Double "p" is the exhibit to which you have just testified is it, Mr. Jones?

A. It is.

Mr. THOMAS: We offer in evidence Exhibit "pp".

Exhibit "pp" is received in evidence.

(See copy on next page.)

762 Q. You may state, Mr. Jones, in what instances, if any, you have been able to trace the source of those false entries, so-called, to the Interest Paid account.

A. June 28, 1889 there was a credit to this account of \$10,000.00 and on the same day Stocks & Bonds account was charged \$10,000.00 as shown in Ledger 7, page 13. On September 30th, 1889, this account was credited with \$7,000.00 and on the same day Real Estate account was charged with the same amount.

Q. In the charge to Real Estate, is there any description so you could tell what it was?

A. No, sir, just simply a charge, and no description given. That is found in Ledger 7, page 447. May 16th, 1890 there was a credit given of \$1500.00. This was charged to the Chemical National Bank of New York, as shown by Ledger 7, page 92. May 19th, 1890 there was a credit of \$2,000.00; the same date the same amount was charged to the Chemical National Bank of New York. June 3rd, 1890 \$2500.00 was credited to this account, and on the same date the same amount was charged to real estate, Ledger 7, page 447. September 25th, 1890 \$5,000 was credited to this account and on the same date the same amount was charged to the American Exchange National Bank of Chicago, Ledger 7, page 123. December 27th, 1890 there was a credit of \$10,000.00 to this account, and on the same date the same amount was charged to Stocks & Bonds account, Ledger 7, page 13. May 2nd, 1891 this account was credited with \$7200.00 and on the same date Certificate of Deposit No. 24481 for \$62,500 was paid, and this \$7200 may be a part of that payment. September 25th, 1891 there was a credit

763 of \$14,000 to this account, and on the same day the same amount was charged to the Continental National Bank of Boston, ledger 8, page 644. May 4th, 1892, this account was credited \$5,000 and on the same day the Chemical National Bank of New York was charged the same amount, ledger 9, page 67.

Q. Have you examined the books of the bank, Mr. Jones, to ascertain the amount that was paid out in dividends from the time it became the Capital National Bank?

A. I have examined the books of the bank from January 12th, 1885 up to July 12th, 1892 and prepared a schedule of the amounts that have been paid out in dividends, which amounts to \$251,750. The schedule shows the date and amount, the book and page, and so forth, where the various entries are found.

Q. Will you have that identified?

(Schedule identified as Exhibit "qq".)

Q. Is Exhibit "qq" the one to which you refer?

A. Yes, sir.

Q. And has been compiled from the books of the Capital National Bank?

A. Yes, sir.

Mr. THOMAS: We offer in evidence Exhibit "qq".

Exhibit "qq" received in evidence, as follows:

764

EXHIBIT "qq."

"Paid out in dividends since organization Capital National Bank, June 1st, 1884—July 12th, 1892, as shown by bank books.

Date paid as shown by journal and ledger.

Dividend paid.

Jan. 12, 1885	.....	6 1/2 %	\$15,000.	J. "A" p. 379, L. "A" p. 798 1/20 Journal "A" p. 392
July 3, 1885 (1)	.....	6 1/2 %	13,000.	Journal "A" p. 536-7
Dec. 31, 1885 (#)	.....	6 1/2 %	16,000.	Journal "B" p. 236-7
Jul. 13, 1886	.....	7 %	14,000.	Journal "B" p. 592-3
Dec. 31, 1886 (2)	.....	6 %	18,000.	Journal "C" p. 200-1
July 1, 1887 (3)	.....	6 %	18,000.	Journal "C" p. 564-5
Jan. 3, 1888 (4)	.....	6 %	18,000.	Journal "D" p. 112-3
Jul. 11, 1888 (5)	.....	6 %	18,000.	Journal "D" p. 440-1
Jan. 8, 1889	.....	6 %	18,000.	Ledger "7" p. 435
July 9, 1889	.....	6 %	18,000.	Ledger "7" p. 435
Jan. 14, 1890	.....	5 %	15,000.	Ledger "7" p. 435
July 9, 1890	.....	5 %	15,000.	Journal "E" p. 167
Jan. 15, 1891	.....	5 %	15,000.	Journal "E" p. 487
Jul. 17, 1891 (")	.....	5 %	13,750.	Journal "E" p. 795
Jan. 12, 1892	.....	5 %	15,000.	Journal "F" p. 298-9
July 12, 1892	.....	4 %	12,000.	Journal "F" p. 604-5

Total loss

\$251,750.—as bank was never in condition to legally pay dividends.

(1) Record Book, "2nd Tuesday in July, 1885).

(#) Book entries made Dec. 31, 1885, dividend declared Jan. 12, 1886.

(2) Record book "Jan. 11, 1887"

(3) Record Book, "July 12, 1887".

(") Record Book says Dividend of \$15,000.00. Books show only \$13750.00 charged under profits, besides \$2000.00 credited to Surplus account.

(4) Record Book "Jan'y 10th, 1888".

(5) Record Book, "July 10th, 1888".

765 Q. Have you examined the books and documents of the Capital National Bank with reference to the purported Certificate of Deposit of \$100,250.00 issued to J. E. Hill, treasurer?

A. I have.

Q. And also with reference to a credit of a like amount which appears to have been given to the Nebraska Relief Fund on the books of the Capital National Bank?

A. I have.

Q. You may state the result of that examination.

A. April 25th, 1891, Journal "A" page 655, and Balance Ledger "2" shows that the Chemical National Bank was charged with \$101,516.70. Certificate of Deposit account, No. 2, was charged with \$100,000 and on the same date the Nebraska Relief Fund was credited with \$100,250.00 certificate of deposit No. 24453 was issued to Mr. Imhof for \$1,166.70. On the same day certificate of deposit No. 24454 was issued to — for \$100.00; on the same day certificate of deposit No. 24452 was issued in the name of J. E. Hill, Treasurer for \$100,250.00. I consider this a loss to the bank of \$100,000, as the charge of \$100,000 to certificate of deposit account No. 2 was a fraud, as the bank books show that there was no such certificate of deposit outstanding at that date.

766 Q. In other words, do you mean that the certificate issued in the name of J. E. Hill, was a duplication of the credit to the Relief Fund?

A. No, that is not the way I would put it. The fraud here consists of an even hundred thousand dollars, that is the charge of \$100,000 certificate being paid that day, because the books of the bank show that there was no such certificate of deposit outstanding and by debiting that account with \$100,000 made a way for issuing this \$100,250 certificate. All that anyone had to do to make the accounts balance on that day was to put in \$250., in cash, or its equivalent, and then both sides of the book would balance.

Q. Then what do you say as to whether the Capital National Bank received the equivalent of the certificate of deposit of \$100,250.00?

A. The books show simply that \$250.00 was put in *the* balance the account.

Q. Then did the bank receive anything for the remainder of that \$100,250 certificate?

A. The books show nothing for that only the fraudulent charge against the account.

767 Q. And is Exhibit X-140 the certificate of deposit which appears by the books to have been issued at that time for \$100,250.00?

A. It is.

Q. Now have you followed and traced through the history of this certificate for \$100,250 to ascertain what became of it, and what was apparently done with the proceeds of it?

A. I have.

Q. You may give us in narrative form the history of that certi-

cate of deposit as disclosed by an examination of the books and documents of the bank.

A. The books of the bank show that on April 28th, 1891 certificate of deposit No. 24452, issued in the name of J. E. Hill, Treasurer was cancelled and paid and charged to certificate account to the amount of \$100,250. On the same day a new certificate was issued to C. W. Mosher, Treasurer, No. 24473, for \$75,000, and on the same day the account of C. W. Mosher was credited with \$10,000; on the same day the account of Prison Contract was credited with \$15,000.

April 30th, 1891, the books show as follows: Certificate of deposit No. 24473 issued in the name of C. W. Mosher, Treasurer, was cancelled and paid as \$75,000 and charged to certificate of deposit account. On the same day a new certificate of deposit was issued to

C. W. Mosher, No. 24481, for for \$62,500. On the same date the account of Mosher and Outcalt was credited with \$2500; on the same date the account of R. C. Outcalt, Treasurer was credited with \$10,000. These credits just off-set the \$75,000 the amount of the certificate.

On May 2nd, 1891 the books show a certificate of deposit No. 24481 issued in the name of C. W. Mosher was cancelled and paid for \$62,500 and charged to the account of Certificate of Deposit. On the same date new certificates of deposit issued, No. 24496 to C. W. Mosher for \$52,500, and on the same date a credit to the account of Walsh & Putnam of \$2800, and on the same date a credit to the account of Interest Paid of \$7200.

May 5th, 1891, the books show certificate of deposit, No. 24496, C. W. Mosher, was cancelled and paid as \$52,500 and charged to the certificate of deposit account, and on the same day new certificate, No. 24522, was issued to C. W. Mosher, Treasurer for \$32,500; on the same date two notes of C. W. Mosher's was paid, one note for \$10,000—No. 50539—and the other note, No. 50540 for \$10,000. These just balanced.

May 8th, 1891 the books show certificate of deposit No. 24522, C. W. Mosher, Treasurer; cancelled and paid for \$32,500 and charged to certificate of deposit account; on the same day a new certificate, No. 24537 was issued for \$12,500; on the same day two notes of C. W. Mosher was paid, No. 50545 for \$10,000, and No. 50550 for \$10,000. These amounts just balanced.

May 14th, 1891 the books show as follows: Certificate of deposit No. 24537 to C. W. Mosher, Treasurer cancelled and paid as \$12,500 and charged to the account of Certificates of Deposit; on the same date note paid of Western Manufacturing Company, No. 101012 for \$5,000; on the same day issued a new certificate of deposit, No. 24570 to C. W. Mosher, Treasurer for \$7500.

May 16th, 1891 the books show certificate of deposit No. 24570 to C. W. Mosher was cancelled and paid for \$7500., and charged to certificate of deposit account. The books show no corresponding entry for the \$7500; therefore cash must have been taken out.

Q. Have you examined the books of the Capital National Bank

with reference to the open account of the State Treasurer from sometime in December, 1889, until its close, or until the close of that account?

A. I have.

Q. You may state the result of that examination as disclosed by the books.

A. The books of the Capital National Bank show that on December 24th, 1889, in the Individual Balance book, No. 2 for November and December, 1889, that the state treasurer's account was credited with \$100,000. There is nothing on the Journal to authorize this credit, and the \$100,000 false credit threw the books out of balance \$100,000, and the books were out of balance every business day from December 24th, 1889 to December 28th, 1892, \$100,000.

Q. You used the word "false". You don't mean to say that that credit to Mr. Hill indicated that no such deposit was made do you?

770 A. There was no such credit as that made at that time.

Q. What do you mean by that. You said there was such a credit made on the books.

A. Yes sir; I called it a false credit because there was nothing went into the bank at that time, and the credit of this \$100,000 to this account threw the books out of balance just a hundred thousand dollars.

Q. That is, so far as the bank is concerned, it didn't get the \$100,000.

A. Certainly, if they had got it, it wouldn't have been a false credit.

Q. Well did you follow out this account to see whether it was checked out from time to time?

A. It was in the usual course of business.

Q. And that would indicate that Mr. Hill was entitled to a credit, but that the bank hadn't received it.

Q. What does that indicate to you as to what that transaction was?

A. The books show that on December 24th, 1889 when state treasurer Hill's account was credited with \$100,000 that the bank received nothing, and the placing of the \$100,000 of a credit to the state treasurer's account on that day,—nothing going into
771 the bank—threw the books out of balance \$100,000.

Q. And you say the balance that was made by this credit of \$100,000, was gradually checked out from time to time?

A. Why his account would run along in the usual course; it never was checked out up until the time the state treasurer's account changed, and then it shows closed.

Q. What was the effect of that transaction upon the assets of the bank?

A. Understated them to the extent of \$100,000.

Q. And the checking out of this account, what effect, if any, did that have, in abstracting or taking out assets of the bank when the various checks that were made on that account were presented and paid, as the books show that they were?

A. The loss to the bank would have to be the amount of the credit, which was \$100,000.

Q. Now you say the books were out of balance,—explain that, in what way you mean that.

A. An account is out of balance when the two sides do not agree,—your debit and your credit. There was a credit given here to this account of \$100,000,—nothing received,—therefore when you would balance up your accounts there would be \$100,000 difference in the two sides.

772 Q. And you say that continued for a period of three years?

A. Practically so, until December 28th, 1892.

Q. And were any entries made at that time, or about that time which brought the books back into balance?

A. Yes, sir.

Q. What were those entries and purported transactions as shown by the books?

A. On December 28th, 1892 the books show,—Journal G, page 95—Bills Receivable taken that day amounting to \$77,570.00 among which are the following notes: C. W. Mosher, No. 50642 for \$20,000. C. W. Mosher, No. 50643 for \$20,833.34 R. C. Outcalt note, No. 50640 for \$15,000. R. C. Outcalt note, No. 50649 for \$14,136.36. Mosher and Outcalt on this day gave their personal check on the Capital National Bank for Thirty thousand dollars. The amount of these notes which I have just stated, and the check of \$30,000 amounts to \$100,000. The books show that no accounts were credited, so the bank books were again made to balance. On December 24, 1891—Journal G, page 91—shows notes taken by the bank \$38,375.00 among which are notes, C. W. Mosher, No. 50638 for \$17,500.00 R. C. Outcalt, No. 50639 for \$12,500.00—a total of \$30,000. On the same day the account of Mosher and Outcalt is credited with Thirty thousand dollars. The credit is found on Individual Balance Ledger 2 for November and December, 1892.

Q. Now was that discrepancy, or the fact that the books were out of balance obvious and patent?

A. Yes sir, very easily seen and detected.

Q. Have you examined the books, certificates and other documents of the bank to ascertain any irregularities in the certificate of deposit account, that is, any difference in the amount

773 shown outstanding at any particular time, and the actual amount outstanding at that time?

A. Yes, sir.

Q. And have you made a schedule of any certificates of deposit of that character?

A. I have made a schedule showing the certificates of deposit outstanding and unpaid on July 1st, 1891 as shown by the certificate of deposit ledger, giving the date of the certificate, the number of the certificate and the amount of the certificate.

Q. State the result of your examination.

A. The total amount of certificates of deposit outstanding and unpaid as shown by the certificate register July 1st, 1891 is \$153,854.01; while the amount shown to be outstanding by the ledger of

\$100,938.59, or a difference of \$52,915.42 more certificates of deposit outstanding as shown by the certificate of deposit register, than is shown by the ledger.

Q. Now have you examined the books and documents of the bank with reference to certificates of deposit that were issued apparently for one amount and shown by the books to have been issued for another amount, and so carried onto the other books of the bank?

A. I have.

Q. You may state the result of that examination.

774 A. The bank books show that certificate of deposit No. 17969 was issued April 28th, 1888, to C. H. Willard, Treasurer, for \$40,000. This certificate is stamped paid January 7th, 1889 as \$40,000 and charged to certificate of deposit account as \$40,000. The certificate of deposit stub book shows nothing only 40,000 written down in figures and then a line drawn through it. Certificate register, the date of issue shows nothing, neither does the certificate register date of payment show anything.

Q. Have you made a similar examination with reference to certificate of deposit No. 21379 for \$50,000?

A. I have.

Q. You may state the result of that examination.

A. The books show that certificate of deposit No. 21379 was issued December 23, 1889 to J. E. Hill, treas., for \$50,000. The certificate was stamped paid January 6th, 1893 as \$50,000. The amount shown on the certificate of deposit register on date of issue is 775 \$100. The amount charged on ledger on account of this certificate is \$5.00. April 24th the certificate is marked paid on the certificate of deposit register as \$100.

Q. If you have made a similar examination of the books with reference to certificate of deposit No. 24491, you may state the result of that examination.

A. The books show that certificate of deposit No. 24471 issued April 28th, 1891 to D. B. Welch for \$10,000. Certificate of Deposit stub book April 28th, 1891 shows this certificate issued in the name of "Costs" for \$1.50. Ledger of this date shows nothing received by the bank account of this certificate.

Q. What does the certificate register show?

A. The certificate is stamped paid November 28, 1891 as \$10,000. Certificate of Deposit register shows this certificate paid May 13th, 1891, as \$1.50. Certificate of deposit register April 28th, 1891 shows the certificate issued "Costs \$1.50".

Q. Have you made a similar examination of the books and documents of the bank with reference to No. 25097?

A. I have.

Q. You may state the result of that investigation.

776 —. The bank book shows certificate of deposit No. 25097 as issued August 17th, 1891 to J. E. Hill, Treasurer for \$50,000; Certificate stub book, August 17th, 1891 shows issued to J. E. Hill, Treasurer for \$50.00; Certificate of Deposit Register, August 17th, 1891 shows issued in the name of "Collection" for \$50.00. August 17th, 1891 the ledger shows the bank received account of this certifi-

cate \$50. Certificate was stamped paid January 6th, 1893 and charged to certificate of deposit account as \$50,000. Certificate of deposit register shows certificate outstanding and unpaid.

Q. Have you made similar investigation with reference to certificate of deposit No. 25933?

A. I have.

Q. You may state the result of that investigation.

A. The bank book shows certificate of deposit No. 25933 as issued January 2d, 1892 to Mayer Brothers for \$11,000. Certificate of Deposit stub book, January 2, 1892 shows certificate issued to Mayer Brothers for \$1,000. January 2, 1892 ledger shows bank received, account of this certificate, \$1,000. The certificate of deposit was stamped paid January 3, 1893 as \$11,000. Register shows certificate not paid, as \$1,000.

777 Q. Have you made similar investigation with reference to certificate No. 26818?

A. I have.

Q. You may state the result of that investigation.

A. The bank book shows certificate of deposit No. 26818 issued May 16th, 1892 to the First National Bank of Poultney for \$5,000; Certificate stub book shows, May 16th, 1892, issued to Loup City costs for \$3.00. The register was gone. May 16th, 1892 ledger shows the bank received, account of this certificate \$3.00. Certificate is cancelled, and receiver's certificate is issued for it.

Q. In what amount?

A. \$5,000.00.

Q. Have you made similar investigation with reference to Certificate of Deposit No. 27401?

A. I have.

Q. You may give the result of that investigation.

778 A. Bank books show Certificate of Deposit No. 27401 as issued August 18th, 1891 to George Olcott Cashier, for \$5,000. Certificate stub book, August 18th, 1891 shows issued in the name of "Costs", for \$1.77. The register is gone. Ledger, August 18th, 1891 shows the bank received, account of this certificate, \$1.77. Certificate was cancelled and Receiver's receipt issued therefor.

Q. Is that certificate among those that are now,—and have been offered here in evidence, as one of the certificates unpaid and outstanding at the time of the bank's failure?

A. Yes sir, and I will say that all certificates that I will testify to in this regard, you will find in that package of certificates, and that will show them allowed, and the Receiver's number, and so forth.

Q. Is that one of the number of exhibits, commencing with No. 147 and extending to 923½,—it is in this package of certificates.

A. Yes sir, in that bunch; I think that is the proper number of the exhibits.

779 Q. Have you made a similar examination of the books and records of the bank with reference to certificate of deposit No. 27978?

A. I have.

Q. You may state the result of that examination.

A. The books of the bank show that that certificate of deposit, No. 27978 was issued November 3rd, 1892 to the LaSalle National Bank for \$5,000. Certificate stub book, November 3, 1892 shows certificate issued to "Interest account" for \$3.00. The certificate of deposit register is gone. November 3rd, 1892 the ledger shows that the bank received, account of this certificate, \$3.00. Certificate was cancelled and receiver's receipt issued therefor for \$5,000.

Q. That is one of the certificates that was outstanding at the time of the failure of the bank?

A. Yes sir.

Q. That has been offered in evidence?

A. Yes, sir.

Q. Now have you made similar investigation with reference to Certificate of Deposit No. 28009?

A. I have.

Q. You may state the result of that investigation.

780 A. The bank books show certificate of deposit No. 28009 issued November 7th, 1892 to LaSalle National Bank for \$5,000. Certificate stub book shows issued in the name of "Costs" for \$3.00. Certificate register is gone. Ledger shows that the bank received on account of this certificate \$3.00. Certificate was cancelled and receiver's receipt issued therefor as \$5,000.

Q. That certificate was outstanding and unpaid at the time of the failure of the bank?

A. It was.

Q. Now have you made similar investigation with regard to certificate No. 24806?

A. I have.

Q. You may state the result of that investigation.

A. The bank books show that certificate No. 24806 was issued June 27th, 1891 to Cassius S. Weese for \$2100. Stub book, June 27th, 1891 shows it was issued to Cassius M. Weese as \$2100.;

781 Register of June 27th, 1891 shows Cassius Weese for \$100.00; Ledger of June 27th, 1891 shows \$2100; certificate stamped paid July 27th, 1892 as \$2100.00. The Certificate of Deposit Register shows it not paid and outstanding at \$100.00.

Q. Have you made a similar investigation of the books and record of the bank with reference to certificate of deposit No. 24709?

A. I have.

Q. State the result of that investigation.

A. The bank books show that certificate of deposit No. 24709 was issued June 10th, 1891 to John A. T. Hibbs for \$3,000. Certificate stub book, June 10th, 1891 shows issued to John A. T. Hibbs for \$3,000; Register of June 10th, 1891 shows issued to John A. T. Hibbs for \$300.00; certificate stamped paid July 8th, 1892 as \$3,000. Certificate register shows paid June 11th, 1891 as \$300.00.

Q. Have you made a similar examination of the books and records of the bank with reference to certificate of deposit No. 24653?

A. I have.

Q. You may state the result of that examination.

782 A. The bank's books show that certificate of deposit No. 24653 was issued June 1st, 1891 to C. Hammond for \$5,000.

Certificate stub book, June 1st, 1891, shows issued to C. Hammond for \$5,000. Certificate register, June 1st, 1891, shows issued to C. Hammond for \$100.00. Certificate is stamped paid June 20th, 1892 as \$5,000; register shows it outstanding and unpaid as \$100.

Q. Have you made a similar investigation with reference to certificate No. 23593?

A. I have.

Q. You may state the result of that investigation.

A. The bank books show certificate of deposit No. 23593 issued — J. E. Hill, State Treasurer, December 9th, 1890 for \$40,000. Certificate stub book shows J. E. Hill for \$40,000. The certificate register shows "do." \$100.00. Certificate stamped paid November 3, 1892 as \$40,000. Register shows same was paid April 24th, 1891 as \$100.00.

Q. Have you made a similar investigation as to certificate of deposit No. 24574?

A. I have.

Q. You may state the result of that examination.

A. The bank books show that certificate of deposit No. 24574 was issued May 15th, 1891 to P. L. T. Ashton for \$1500. Certificate stub book shows issued to P. L. T. Ashton for \$1500.00; Certificate register May 15th, 1891, shows issued to P. L. T. Ashton for \$500. Ledger, May 15th, 1891 shows \$1500. Certificate is stamped paid June 30th, 1892 as \$1500. Certificate of deposit register shows it was paid on May 25th 1891 as \$500.

Q. Have you made a similar examination of the books and documents of the bank with reference to certificate of deposit No. 24866?

A. I have.

Q. You may state the result of that examination.

784 A. The books of the bank show that certificate of deposit No. 24866 issued July 8th, 1891 to A. Humphreys for \$4500. Certificate stub book, July 8th, 1891 shows issued to A. Humphreys for \$4500. Certificate of deposit register, July 8th, 1891 shows A. Humphreys \$500.00. Ledger of July 8th, 1891 shows it at \$4500. Certificate stamped paid October 13th, 1891 as \$4500. Register shows paid October 13th, 1891 as \$500.

Q. And have you made a similar investigation of the books and documents of the bank with reference to certificate of deposit No. 24937?

A. I have.

Q. You may state the result of that investigation.

A. The bank books show that certificate of deposit number 24937 was issued July 18, 1891 to J. E. Hill, treasurer for \$14,650. Certificate stub book, July 18th, 1891 shows J. E. Hill, treasurer for \$14,650. Certificate of deposit register July 18th, 1891 shows issued in the name of "Collection" for \$4650, and the certificate is stamped paid August 6th, 1891 as \$14,650. Certificate of deposit register marked paid August 6th, 1891 as \$4650.00.

(Adjournment until Tuesday, February 7th, 1911, at 9 o'clock a. m.)

TUESDAY MORNING, February 7th, 1911.

Direct examination of H. T. JONES continued:

Q. Now have you made a similar investigation of the books and documents of the Capital National Bank with reference to certificate of deposit No. 24491?

A. I have.

Q. You may state the result of that investigation.

A. The books of the Capital National Bank show that Certificate No. 24941 was issued July 20th, 1891 to J. E. Hill state treasurer for \$10,000. The certificate stub book of July 20th, 1891 shows J. E. Hill state treasurer for \$10,000; the certificate register, July 20th, 1891, shows J. E. Hill, \$5.00. July 20th, 1891 the ledger account shows \$10,000; the certificate is stamped paid August 8th, 1891 as \$10,000; the certificate register shows paid August 6th, 1891 as \$5,000.

Q. Have you made a similar investigation with reference to certificate of deposit No. 24981?

A. I have.

Q. You may state the result of that investigation.

786 A. The books of the Capital National Bank show that Certificate of Deposit, No. 24981 was issued July 27th, 1891 to A. P. S. Stuart for \$2,000. The certificate stub book, July 27th, 1891 shows issued to A. P. S. Stuart for \$20.00; certificate register of July 27th, 1891 shows issued to A. P. S. Stuart as \$20.00; the ledger account of July 27th, 1891, shows \$2,000. The certificate is stamped paid January 27th, 1892 for \$2,000. The certificate register shows paid January 27th, 1892 as \$20.00.

Q. Have you made similar investigation with reference to certificate of deposit No. 24986?

A. I have.

Q. You may state the result of that investigation.

A. The books of the Capital National Bank show that Certificate of deposit No. 24986 was issued July 27th, 1891 to H. R. King for \$7,000. The stub book for July 27th, 1891 shows issued to H. R. King for \$1,000. The certificate register of July 27th, 1891 shows H. R. King for \$1000. The ledger account July 27th, 1891 shows as \$7,000. Certificate was stamped paid, but the stamp date is blurred so that I can't state just what the cancellation date is, as \$7,000. The certificate register shows it paid August 7th, 1891 as \$1,000.

Q. Have you made a similar investigation with reference to Certificate of Deposit No. 25047?

A. I have.

787 Q. You may state the result of your investigation.

A. The bank books show that certificate issued August 6th 1891 to J. E. Hill, treasurer, for \$37,975. The certificate stub book shows August 6th, 1891, J. E. Hill, treasurer as \$975.00; the certificate register of August 6th, 1891 shows issued to "Collections" for \$975. August 6th, 1891 the ledger shows \$37,975.

Certificate stamped paid August 13th, 1892 as \$37,975. Certificate register marked paid August 8th, 1891, as \$975.00.

Q. Have you made a similar investigation with reference to Certificate of Deposit No. 25056?

A. I have.

Q. You may state the result of that investigation.

A. The bank books show Certificate of Deposit No. 25056 issued August 8th, 1891 to "Harper notes" for \$7,000; the certificate stub book August 8th, 1891 shows "Harper notes," as \$1,788 000. Certificate register, August 8th, 1891, shows issued to "Collections" for \$1,000. August 8th, 1891 ledger account shows \$7,000. Certificate is stamped paid October 2, 1891 as \$7,000. Register marked paid August 14th, 1891 as \$1,000.

Q. Have you made a similar investigation with reference to certificate of deposit No. 25636?

A. I have.

Q. You may state the result of that investigation.

A. The bank books show that certificate of deposit No. 25636, —

Q. Do you mean the bank books show, or the certificate itself?

A. I take it from the books and the certificates both. The bank books and records show that certificate of deposit No. 25636 was issued November 18, 1891 to J. E. Hill treasurer, for \$50,000. Stub book of November 18th, 1891 shows issued to J. E. Hill, treasurer for \$50,000. Certificate register of November 18th, 1891 shows issued to "Colls." as \$100. The ledger of November 18th, 1891 shows \$50,000, and the certificate is stamped paid May 21, 1892 as \$50,000. The certificate register shows not paid, but outstanding as \$100.

Q. Have you made a similar investigation with reference to certificate of deposit No. 25691?

A. I have.

789 Q. You may state the result of that investigation.

A. Certificate of deposit No. 25691 was issued November 28th, 1891 to D. B. Welch for \$10,000. The certificate stub book of November 28th, 1891 shows issued to D. B. Welch for \$10,000; the certificate register of November 28th, 1891 shows issued to D. B. Welch for \$100. Ledger of November 8th, 1891 shows \$10,000. The certificate is stamped paid June 28th, 1892 as \$10,000; register shows not paid and outstanding as \$100.

Q. Have you made a similar examination with reference to Certificate of deposit No. 24937?

A. I have.

Q. You may state the result of that investigation.

A. Certificate No. 24937 was issued July 18th, 1891 to J. E. Hill, treasurer, for \$14,650. Certificate stub book, July 18th, 1891 shows issued to J. E. Hill, treasurer for \$14,650. The certificate register of July 18th, 1891 shows issued to "Collections for
790 \$4,650.00; Certificate is stamped paid August 6th, 1891 as \$4,650.

Q. Have you made a similar investigation with reference to Certificate of Deposit No. 25862?

A. I have.

Q. You may state the result of that investigation.

A. Certificate No. 25862 is issued December 22, 1891 to J. E. Hill, treasurer for \$37,114.75; certificate stub book of December 22, 1891 shows issued to J. E. Hill treasurer for \$37,114.75; Certificate of deposit register, December 22, 1891 shows issued to "do," for \$114.75. Certificate is stamped paid December 13th 1892 for \$37,114.75. Register shows not paid and outstanding as \$114.75.

Q. And have you totaled up the amount of the certificates to which you have testified as to discrepancies between the certificates and the ledger account?

A. I have.

Q. And what is the total?

A. The certificates which I have just testified to shows a loss to the bank of \$179,934.23.

Q. Have you made a similar investigation with reference to certificate of deposit No. 21386?

A. I have.

Q. You may state the result of that investigation.

791-801 A. Certificate of deposit No. 21386,—the certificate itself is missing, and was missing at the time I made my original notes. The certificate stub book shows December 24th 1889 issued to J. E. Hill, for \$5.00; the certificate register shows issued to G. M. Bartlett, Tr., for \$5.00. The ledger account is shown as \$50,000; the certificate of deposit register is marked paid December 24th, 1889 as \$5.00.

Q. Is this certificate to which you have just testified included in the total to which you have previously testified?

A. No sir, I didn't put it in for this reason; the certificate when I first went there was there, but when I went to make up my final minutes it had been abstracted, and for that reason I did not include it, because the certificate itself could not be produced in court.

Q. When was it you say you saw the certificate, Mr. Jones?

A. While I was making an examination of the records; they were in the hands of Hayden, receiver.

Q. Were there any other documents that you found missing that you had seen at that prior time, and when you went to take the deposition of Mr. McDonald they were found to be missing?

A. Yes sir, quite a number of them.

* * * * *

802 Q. Did you see the original report of that character of which this Exhibit X-977 is a copy?

A. I did.

Q. And did that bear the signatures of anyone?

A. It did.

Q. And whose signatures did the original bear?

A. C. W. Mosher, president, C. W. Mosher, C. E. Yates and D. E. Thompson, directors.

Q. Now, Mr. Jones, are you acquainted with the handwriting

803 of these parties so that you can testify whether or not these original instruments bore their genuine signatures?

A. Yes, sir.

Q. You may state whether the original of which this Exhibit X-977 is a copy, bore the genuine signature of C. W. Mosher, president?

A. It did.

Q. Did it bear the genuine signature of C. W. Mosher director?

A. It did.

Q. And did it bear the genuine signatures of C. E. Yates and D. E. Thompson, the defendants in this case?

804-821 A. It did.

* * * * *

822 Q. Now, Mr. Jones, you may state if you made an examination of the books of the Capital National Bank to ascertain the amount that the books themselves showed outstanding as a liability on account of certificates of deposit outstanding and unpaid at the date of the failure of the bank?

A. I have.

Q. Can you state what amount the books themselves showed were outstanding as a liability of the bank at the time the bank closed its doors, January 21, 1893?

A. I can.

Q. And the books which reflect that condition and show the amount outstanding are here in court, are they?

A. They are.

Q. And are the books that have been identified during the progress of this trial?

A. They are.

Q. You may state then what amount is shown by the books of the Capital National Bank to have been outstanding and a liability on account of certificates of deposit outstanding at the date referred to, January 21, 1893.

823 A. The books show \$86,665.70 of certificates of deposit outstanding and unpaid.

Q. Mr. Jones, have you made an examination, and a list of the certificates of deposit which were actually outstanding and which have been offered in evidence here, and were unpaid and a liability of the bank at the time of its failure, referring of course to liability on account of the certificates of deposit?

A. I have.

Q. Have you footed up the amount of the certificates outstanding and unpaid at the time of the suspension of the bank?

A. I have.

Q. And what is the total amount of the certificates that are here in evidence as outstanding?

A. The total amount of certificates outstanding I make \$517,999.49. The amount outstanding as shown by the books of the bank \$86,265.70. They show a discrepancy of \$431,733.79.

Q. And did you find that any of the certificate accounts that were carried on the books of the bank at various times were overdrawn?

A. Yes sir; I have prepared a list of where the certificates of deposit account showed overdrafts at various dates.

Q. How can you as a bookkeeper and an expert accountant account for a certificate of deposit account being overdrawn if properly kept?

824 A. A certificate of deposit account properly kept could not be overdrawn.

Q. Explain why.

A. A certificate of deposit account shows the amount of money that customers of a bank will bring to a bank and deposit and receive a certificate therefor, and of course a bank would not issue a certificate of deposit unless it had received the money, if it was an honest transaction, and it being an account of that kind you can readily see that it would be impossible to have it overdrawn, if properly kept.

Mr. ROSE: You couldn't overdraw an account that imported a liability as its foundation?

A. Not a certificate of deposit account, because the certificates of deposit outstanding, if properly kept, will equal the amount shown in the certificate of deposit account. It is not like a personal account. A man with a personal account in a bank could draw a check for a greater amount than was on deposit, and if the bank would pay it, it would show an overdraft, but a certificate of deposit account is different.

Q. There couldn't be a certificate that had not been issued?

A. No sir, oh, no.

Q. And did you say you made an examination of that account at various dates during the existence of the bank with reference to overdrafts in the certificate of deposit account?

A. I have.

Q. You may state, Mr. Jones, at what various times during the existence of the bank this certificate of deposit account is shown by the books to have been overdrawn,

825 A. Certificate of Deposit Account, No. 1, November 3, 1888 shows to be overdrawn \$1556.52, and this account is overdrawn every day during the month of November.

Q. Of what year?

A. 1888. This account is overdrawn every day during the month of December, 1888, as shown by Individual Ledger No. 2, for November and December, 1888. Account No. 1 is overdrawn every day during the months of November and December, 1889, as shown by Ledger No. 2 for November and December, 1889. The same account is overdrawn every day for the months of January and February, 1890, as shown by Ledger No. 2, January and February, 1890. This account is overdrawn during the months of May and June, 1891, as shown by Ledger account No. 2, for May and June, 1891. This account is overdrawn every day during the months of November and December, 1891, as shown by Individual Ledger No. 2, for November and December, 1891. This account is overdrawn every day during the months of May and June, 1892, as shown

by Ledger No. 2 for May and June, 1892. This account is overdrawn every day for the months of November and December, 1892, as shown by Ledger No. 2 for November and December, 1892. Certificate of Deposit account No. 2 overdrawn November 1st 1892 \$3,819.23. This account shows overdrawn every day during the month of November, 1892. This account shows overdrawn every day during the month of December, 1892 at various amounts as shown by Individual Ledger No. 2 for November and December, 1892. Account No. 1 is overdrawn every day in January up to the close of the bank, as shown by ledger No. 2.

Q. January 1893?

A. Yes sir. Account No. 3 is overdrawn January 16th, 1893 \$4271.81 and this account continued to be overdrawn up to the close of the bank, and the day the bank closed it showed an overdraft of \$10,527.46. On January 6th, 1893 Certificate of Deposit Account, No. 4, showed that they paid \$91,533.42 more certificates during that day's business than the books showed was outstanding, and what accounted for this discrepancy was Certificate of Deposit No. 21379 that was issued for \$50,000 and carried onto the ledger of the bank as only \$5.00; also Certificate of Deposit No. 25097 was issued for \$50,000 and charged as only \$3.00.

Q. Those two were indicated paid that day?

A. I said they were paid that day.

Q. For \$50,000 each?

A. Yes sir.

Q. Mr. Jones, are those overdrafts that appear in these various accounts apparent and obvious?

A. Yes, sir.

Q. Would it require a person of more than ordinary ability or one that had any knowledge of bookkeeping to detect and ascertain that?

A. I think not.

827 Q. Now explain why not, Mr. Jones—just how that could be detected.

A. An account as I understand it can only be two ways; a debit balance or a credit balance; you can have an amount coming to you or it can be an overdrawn account. Now then I couldn't conceive of how a person wouldn't know that if an account wasn't overdrawn, why they wouldn't know it was the reverse.

Q. What I mean is, how would these overdrafts show on the books,—how did it appear,—what was there on the books to indicate that it was overdrawn?

A. In this bank the overdrafts are shown in red ink; the credit balances are shown in black ink; all overdrafts in those books were shown by red ink.

Q. And were those overdrafts to which you have testified all indicated in red ink?

A. Yes, sir.

Q. And was it necessary to make any footings, or add up any columns of figures, to see the amount of the overdrafts at any time?

828 A. Oh no. The amounts were placed in red ink,—so many dollars and so many cents for each day's business.

Q. Have you examined the records and books of the bank to ascertain what notes of the various directors passed through the bank and at different times were entered into its Bills Receivable?

A. I have.

Q. Did you prepare schedule of them?

A. I have a schedule showing the total amount of loans, according to the statement made as shown by the books.

Q. Did you go over the books to ascertain the amount of notes of W. W. Holmes that were shown by the ledger to have gone through the bank and entered into its assets?

A. I did.

Q. What is the amount of notes of his in the aggregate that went through the bank at different times?

A. \$238,800.

Q. Of course you don't mean that those were in at one time but those were the aggregate amount—those that passed through at various times.

829 A. That is the total amount of loans that director Holmes made with the Capital National Bank, as shown by the books.

Q. What amount of loans were taken in the same manner, if any, of R. C. Outcalt, and entered into the assets of the bank?

A. \$273,130.61.

Q. What amount, if any, of C. W. Mosher went through the bank in the same manner?

A. \$711,648.98.

Q. What amount of notes of R. O. Phillips went through the bank in the same manner?

A. \$139,470.04.

Q. What amount of notes of C. E. Yates went through the bank in the same manner?

A. \$43,140.

830 Q. And the amount of notes of D. E. Thompson that went through the bank in the same manner?

A. Paper classified as Director's paper, \$73,677.50.

Q. Were there any other notes that were otherwise classified?

A. Yes, sir.

Q. What ones?

A. Bills Receivable No. 50532 was a note signed by Thompson and Mosher for \$1640.

Q. Was it the defendant D. E. Thompson, you mean?

A. Yes, sir.

Q. And C. W. Mosher?

A. Yes, sir.

Q. What amount?

A. \$1600.

Q. When was that shown taken into the bank?

A. The date of the note was June 2, 1889.

Q. Find any other paper?

A. Yes, sir.

Q. You may state what it was.

A. No. 34724 for \$2350.00.

Q. What was that?

A. It was a note.

Q. Whose?

A. Of J. E. Baum and D. E. Thompson.

Q. What other?

A. No. 73139 for \$350. It was a note of J. S. Alexander and D. E. Thompson.

831 Q. I will ask you, Mr. Jones, if you have examined the books of the bank to ascertain what notes of E. W. Mosher were taken into the bank and made a part of its assets, as Bills Receivable?

A. I have prepared a list showing, the date, book and page where found, the number of the note and the amount. The various notes amount to \$199,626.70.

Exhibit "RR" identified.

Q. Is Exhibit "rr" the schedule showing the notes of E. W. Mosher, to which you have just referred?

A. It is.

Q. And that was compiled from the books of the bank?

A. It was.

Q. And is it correct?

A. I think it is.

Mr. THOMAS: Then we offer in evidence Exhibit "rr."

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; having no significance whatever to the pending issue, because the sources of the inquiry of the witness have not been sufficiently proven to entitle them to be admitted in evidence; however, I make no specific objection to the fact that the schedule is used instead of an oral recital.

Objection overruled.

Each of the defendants excepts.

Exhibit "rr" received in evidence.

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EXHIBIT "RR."

E. W. Mosher.—List of Loans Made by Him.

Date.	Book and page.	No.	Amount.
1885			
May 26.....	Journ. A 611	8,576a	1,025.00
Jun. 5.....	629	8,689a	4,612.50
Jul. 15.....	695	9,064a	2,000.00
Dec. 26.....	Journ. B 229	11,141a	3,587.50
1886			
May 18.....	B/R-B 80	18,968	58.00
Sep. 21.....	115	20,720	2,802.63

1887				
Dec. 15.....	B/R-2	63	34,116	1,000.00
1888				
Jan. 9.....		77	34,833	2,850.73
Apr. 13.....		122	37,061	2,850.73
Oct. 11.....		135	37,703	125.00
3.....		200	40,975	1,000.00
Dec. 31.....		248	43,385	1,000.00
1889				
Feb. 23.....		292	45,584	1,000.00
Oct. 24.....	B/R-3	120	74,046	1,821.15
1891				
Jan. 12.....		270	97,007	414.23
July 8.....	B/R-4	26	100,184	10,600.00
		31	101,065	12,730.01
		...	101,036	5,000.00
		...	101,067	98.00
		...	101,068	8,631.20
28.....		51	111,069	430.80
Sep. 3.....		60	112,008	5,000.00
1892				
Feb. 18.....		120	118,007	12,730.01
		...	118,008	10,600.00
		...	118,009	8,631.20
		...	118,010	5,000.00
		...	118,011	98.00
Mch. 4.....		130	119,006	5,000.00
14.....		...	119,012	5,000.00
		...	119,013	5,000.00
		...	119,014	5,000.00
		...	119,015	5,000.00
Feb. 6.....		170	131,000	5,000.00
		...	131,001	5,000.00
		...	131,002	5,000.00
		...	131,003	5,000.00
Oct. 6.....		180	132,007	98.00
		190	133,008	430.80
19.....		200	134,007	12,730.01
		...	134,008	10,600.00
		...	134,009	8,611.20
		...	134,010	5,000.00
		...	134,011	5,000.00
Dec. 27.....		220	136,005	2,500.00
Total loans				\$199,326.70

833 Q. Now, Mr. Jones, have you made an examination of the documents and records and books of the bank, of the notes executed by Stark & Mosher, that entered into and became a part of the assets of the Capital National Bank?

A. I have made a list showing the date, the book and page where

found, the number of the note and the amount of the several notes, which aggregate \$337,718.02.

Exhibit "SS" identified.

Q. Is Exhibit "SS" the schedule to which you refer?

A. It is.

Q. Was that compiled from the books and records of the Capital National Bank which have been referred to and are in court at this time?

A. It was.

Q. And is it a correct compilation of what the books show in that behalf?

A. I know they show at least this amount; they might show more; I tried to make a correct list.

Mr. THOMAS: We offer in evidence Exhibit "SS".

Exhibit "SS" received in evidence. (Copy on next page.)

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EXHIBIT "SS."

Stark & Mosher—List of Loans Made by Them.

Date.	Book and page.	No.	Amount.
1886			
Oct. 30.....	B/R-B 10	15,474	2,536.87
Nov. 20.....	10	15,481	3,175.47
1887			
Jan. 3.....	...	15,491	1,163.51
Feb. 2.....	...	15,499	6,415.85
Mch. 2.....	11	15,506	3,685.77
Apr. 6.....	...	15,515	7,573.64
May 4.....	...	15,517	5,872.85
Jun. 1.....	...	15,533	5,040.63
1886			
Nov. 1.....	17	15,809	4,146.98
Dec. 1.....	17	15,813	5,480.15
Jul. 2.....	55	17,723	5,000.00
7.....	...	17,733	112.50
2.....	70	18,498	5,000.00
2.....	84	19,177	5,000.00
24.....	86	19,294	3,536.87
2.....	99	19,935	5,000.00
Jun. 14.....	111	20,509	5,282.32
Jul. 2.....	113	20,605	5,000.00
Oct. 2.....	117	20,831	4,746.90
Jul. 2.....	227	21,328	5,907.71
Sep. 2.....	228	21,378	5,082.00
Nov. 3.....	233	21,619	5,000.00
Dec. 2.....	244	22,169	5,480.15
Aug. 3.....	256	22,750	2,119.65
Dec. 20.....	301	25,017	5,493.60

1887				
Jan.	3	...	25,726	11,810.97
835				
May	16	...	27,321	500.00
Jul.	26	...	29,576	5,493.60
1887				
Aug.	1	B/R-"2" 20	31,987	1,425.20
Sep.	1	...	31,988	4,307.28
Oct.	1	...	31,993	5,623.70
Nov.	1	...	31,996	2,576.10
Dec.	1	...	31,999	5,505.68
	7	21	32,006	4,000.00
1888				
Jan.	1	...	32,012	3,349.92
1887				
Aug.	1	...	32,018	3,968.25
Sep.	1	...	32,019	4,307.28
Oct.	1	...	32,020	5,623.70
1888				
Feb.	1	...	32,021	2,428.23
	21	...	32,022	1,152.17
Mar.	1	...	32,024	2,554.36
	31	...	32,027	3,172.45
May	1	...	32,033	2,260.35
Jun.	1	...	32,034	3,336.85
	30	...	32,040	1,900.50
Aug.	1	...	32,042	764.03
Sep.	1	...	32,044	2,347.30
Oct.	1	...	32,046	980.84
		...	32,048	5,992.67
		...	32,049	6,509.30
	11	...	32,050	7,242.94
Oct.	11	B/R-"2" 22	32,051	5,926.02
		...	32,052	2,188.50
		...	32,053	5,505.68
836				
		B/R-"2"	32,054	5,623.70
		...	32,055	4,307.28
		...	32,056	3,968.25
Nov.	1	...	32,059	904.25
Dec.	1	...	32,061	601.80
	31	...	32,071	452.35
1889				
Feb.	1	...	32,076	1,460.50
Mch.	1	...	32,078	2,679.20
Apr.	1	...	32,080	1,072.79
May	2	...	32,082	2,033.47
Jun.	1	...	32,083	429.00
Jul.	1	...	32,086	514.43

8.....	...	32,087	6,000.00
Aug. 3.....	...	32,092	508.75
1887			
Jul. 17.....	29	32,430	10,600.00
Dec. 28.....	105	36,240	5,493.00
1888			
Mch. 30.....	109	36,416	7,012.80
May 28.....	112	36,578	1,500.00
Jun. 28.....	127	37,301	500.00
Jun. 11.....	152	38,597	8,380.13
Nov. 19.....	275	44,719	7,517.83
1889			
June 6..... B/R-"3"	51	59,094	11,422.69
Oct. 12.....	120	74,009	10,600.00
Nov. 25.....	130	75,051	8,299.24
1890			
Jun. 4.....	171	79,082	5,000.00
Oct. 24.....	240	94,019	10,600.00
Total loans			\$337,718.02

837-841 Q. Have you made a similar investigation as to the notes of the Western Manufacturing Company, executed by E. Hurlbut, Jr., Manager, that entered into the Bills Receivable account of the Capital National Bank, and became a part of its assets as shown by its own books and records?

Mr. ROSE: Each of the defendants objects as immaterial. Objection overruled.
Each of the defendants excepts.

A. I have made a list giving the number of the note, the date, the amount, and so forth, which notes aggregate a total amount of \$755,000.

Exhibit "TT" identified.

Q. Is Exhibit "TT", which I hand you, the schedule to which you refer?

A. It is.

Q. And was that taken and compiled from the books and records of the Capital National Bank which are in court at this time?

A. Yes, sir.

Q. And is that exhibit a correct compilation of the notes that you find passed through the bank and entered into its assets?

A. It is a correct list.

* * * * *

842 A. (continued). There is another part of this schedule that I did not state and that is in regard to interest.

Q. What do the records show in regard to interest having been paid on the Western Manufacturing Company notes?

A. There was interest paid on five of these notes, amounting to \$2,031.19, or in other words there were 152 loans made and interest

was paid on six of them, and on 146 of them no interest was ever paid.

Q. And when does it appear that interest was paid?

A. At what dates?

Q. Yes, sir, and the amounts.

A. October 2nd, 1890, No. 93,030 there was credited to interest account \$208.32 and the same amount was charged to the Western Manufacturing Company's account. August 28th, 1891 there was interest to the amount of \$122.00 paid. May 16th, 1892 interest paid to the amount of \$280.00, December 30th, 1892 interest paid \$1,250. Total interest paid \$2,031.19.

Q. Do the books show from what source the last payment of \$1,250 came,—was it charged to some other account?

A. No, it shows nothing only the credit to the interest paid account, and a note of that amount accepted by the bank as Bills Receivable.

Q. I mean the interest payment of \$1,250.

A. No, it wasn't charged to any account; there was just a \$5,000 note taken in that day.

Q. And the interest credited with \$1,250?

A. Yes, sir.

843 Q. And as to the other items that appear there could you find any account to which those items were charged,—the item of \$170.84 and \$280?

A. That was charged to the Western Manufacturing Company.

Q. Mr. Jones have you examined the books, records and documents of the Capital National Bank to ascertain what notes of the Marshes and their various concerns entered into and became a part of the assets and Bills Receivable of the Capital National Bank?

A. I have.

Q. Did you prepare a schedule from the books showing the various notes, and giving their description, as you have testified in your former testimony?

A. No, the Marsh schedule was prepared in a different way; it was prepared in a ledger form; one which was prepared by Mr. Whitmore and myself, and he used it in his examination, but I can give you the total amount of the loans.

Q. You may state what the total amount is of the paper that went through the bank of the Marshes.

A. The amount of the Marsh paper that passed through the Capital National Bank according to the ledger account is \$510,628.71.

Q. Now, Mr. Jones, with reference to the apparent Bills Receivable that were carried by the bank, I will ask you if these notes were entered up and shown on any register or book of the bank, that is a book kept exclusively to list notes and bills receivable?

844 A. All bills receivable I have found or testified to have been kept in their bills receivable book, or discount register as it is sometimes called in this bank.

Q. And is Exhibit X-25 a book of that character?

A. That is one of the books.

Q. And does that book show listed in it, the notes, among which are the notes which you have testified to?

A. Well on page 312, under the head of Demand Paper, you will notice Edwin W. Mosher. This is the name, number, and the date of the notes are given, and when due, and the rate of interest and the date received by the bank, and this is the amount of the several notes.

Q. Now what amounts appear there, in consecutive order?

A. 1-2-3-4-5-6-7-8-, ranging in amount from \$763.50 up to \$6,881.

Q. Give the amount of each one in that table or column.

A. Commencing at the top of the page, the first note is \$763.44. These are all notes of E. W. Mosher. The next one is \$5,903.77, \$5,505.68, \$5,623.70, \$4,307.28, \$3,968.25, \$6,000.00, \$1,438.82, \$6,881.18.

Q. Now turn to some other page.

A. Now here is another note of D. E. Thompson that I overlooked this morning, of \$1,000.00.

845 Mr. ROSE: Who appears to be the maker there?

A. The maker appears in this column, and in this column it appears to show how secured, if at all, either by collateral or by endorsement, and so forth.

Q. Then that indicates merely that Mr.—

A. It shows here it is by D. E. Thompson, Pt.—president.

Q. Is that a personal obligation, purporting to be of Mr. Thompson's?

A. I wouldn't think so; I would think it was signed as president of this company.

Q. Is the note paid?

A. The book shows the note paid 9/18/81.

Q. Now do these notes in a similar way appear in this book from day to day and from page to page?

A. Yes sir. I will call your attention to a page there. Now there is a page that is exclusively for the officer's paper of the bank.

Mr. ROSE: That page shows everything except the paper of Mosher and Outcalt, doesn't it? Shows it paid.

A. I was going to say, under the line "Paid" here you have to use this distinction; when it shows paid here that doesn't necessarily mean that the note was paid with cash; it can be paid by renewal, and that would show under this column as paid.

Q. There are no notes shown unpaid and still existing on that page?

A. No, only where you see the vacant line.

Q. And those are the Mosher & Outcalt notes?

A. Let me see; That is correct.

Q. Quite a large number of the Mosher and Outcalt notes on this page are shown paid, to, are they not?

A. Yes sir. You will find that same thing true in the various bills receivable book of the bank; they were kept practically in the same form, only for different dates.

846 Q. And were registered similar to those on this book?

A. Yes sir, the same practice.

Q. Mr. Jones, have you examined the books and documents of the bank to ascertain the assets it had, that is—or rather what its books show to be assets which were in fact valueless in July 1st, 1891?

A. I have prepared such a schedule, showing the date note was taken, the number of the note, the name of the makers and the amounts of the several notes.

Q. I will ask you if you have prepared a schedule showing worthless notes or bills receivable that had entered into the bank or was held by the bank as part of its apparent assets on July 1st, 1891?

A. I have prepared such a schedule.

Exhibit "UU" Identified.

Q. Is Exhibit "UU" the schedule you have prepared that shows this paper?

A. It is.

Q. And from what was that schedule compiled?

A. From the books of the Capital National Bank.

Q. By yourself?

A. Yes, sir.

847 Q. Is it a correct compilation?

A. I think it is. That was my intention of making a correct schedule.

Mr. THOMAS: We offer that schedule in evidence.

Mr. ROSE: Mr. Jones do you mean to imply that the books showed the paper to be worthless?

A. No sir.

Mr. ROSE: Each of the defendants objects to the schedule as no foundation laid; incompetent, irrelevant and immaterial.

The COURT: How do you arrive, Mr. Jones, at the question of whether or not the paper was worthless as mentioned in that schedule?

A. From inquiry in to the financial standing of those parties at the times that the notes were given; the character of the companies, in some instances, that gave the notes,—for instance, the Western Manufacturing Company, I have satisfied myself that there never was such a company; that it was a myth, and along the line of general inquiry like you would on any other subject that you were investigating.

Q. Have you investigated the parties who purport to be the makers of those various notes, and made such investigation as you would make if you were making loans to them to ascertain what their financial condition was at the times these loans are shown to be held by the bank?

A. Yes sir, largely. I might say that some of these notes was given by such companies as the Marsh Harvester Company,—Marsh companies of various kind that were well known, you might say, that they were a bankrupt institution years before. And the

same way with Donnell, Lawson & Simpson, I knew that they were bankrupt because I was in the banking business at that time, and it came out in our reports and newspapers and I saw and read about it.

Q. And that bankruptcy and the standing of those various makers have been proved by other evidence in this case.

848 EXHIBIT "UU" Received in Evidence.

(Copy follows.)

List of Worthless Notes & Assets Held by the Capital National Bank, July, 1, 1891.

taken by bank.	No.	Maker.	Amount.
8/20-90	49358	Stark & Mosher.....	\$12,472.25
3/10-91	49499	Stark & Mosher.....	5,000.00
8/31/89	50003	Stark & Mosher.....	7,242.94
8/31/89	50004	Stark & Mosher.....	5,926.02
8/31 '89	50006	Stark & Mosher.....	5,505.68
8/31 '89	50007	Stark & Mosher.....	5,623.70
8/31 '89	50008	Stark & Mosher.....	4,307.38
8/31/89	50009	Stark & Mosher.....	3,968.25
2/1/90	50048	Stark & Mosher.....	1,438.82
3/31/89	50022	Stark & Mosher.....	6,000.00
8/28/89	50056	Stark & Mosher.....	6,881.18
8/28/89	50057	Stark & Mosher.....	5,963.86
11/25/89	75021	Stark & Mosher.....	8,631.20
10/24/90	94019	Stark & Mosher.....	10,600.00
4/13/91	98030	Western M'fg Co....	5,000.00
6/2/91	98161	Western M'fg Co....	5,000.00
6/3/91	99022	Western M'fg Co....	5,000.00
6/5/91	99068	Western M'fg Co....	5,000.00
1/13/90	49174	Marsh & Hinds.....	1,000.00
1/7/91	96029	Marsh Binder Co....	9,000.00
849			
6/25/91	102040	C. W. & W. W. Marsh.	3,600.00
6/25/91	102041	Sycamore Marsh H. Co.	4,500.00
1/7/91	96030	C. T. Turek.....	6,606.51
1/27/91	96039	W. A. Sharrer.....	1,166.62
1/28/91	96040	W. A. Sharrer.....	5,291.30
12/1/90	96016	Mosher & Outcalt....	3,138.72
12/31/90	97006	Mosher & Outcalt....	1,040.00
8/31/89	50000	W. T. Scott.....	7,466.16
10/22/90	50544	C. W. Mosher.....	5,000.10
12/23/90	96-25	R. C. Outcalt.....	4,160.00
5/7/91	98065	R. C. Outcalt.....	5,100.00
5/7/91	101011	R. C. Outcalt.....	6,240.00
1/5/90	95023	R. C. Outcalt.....	5,200.00
1/28/91	97104	W. W. Marsh.....	5,254.17
Total.....			\$183,183.17

850 Q. That schedule "UU" doesn't contain any notes of
Donnell, Lawson & Simpson?

A. No.

Q. Now, Mr. Jones, have you made an examination of the books and records to ascertain what paper or notes were carried by the bank and held as part of its assets on the 1st of January 1892, which were in fact of no value, as you have determined by your investigations, and as shown by the testimony in this case?

A. I have prepared such a schedule.

Q. You may have the reporter identify it as Exhibit "VV".

Exhibit "VV" Identified.

Q. Is Exhibit "VV" the schedule to which you refer?

A. It is.

Q. Was that schedule prepared by you from an examination of the books and documents of the bank?

A. Yes, sir.

Q. And is it correct?

A. I think it is; it was my intention to have it correct.

Mr. THOMAS: We offer in evidence Exhibit "VV".

Mr. ROSE: Did the books of the bank purport to show that this paper was worthless?

A. No, sir, the books of the bank do not comment on any of the assets, whether they are good, bad or indifferent; it simply names them, and the date and the amount, and so forth.

Q. Any judgment you have of the value of this paper you have obtained outside of the books of account?

A. To a certain extent.

851

EXHIBIT "VV" Received in Evidence.

(Copy follows.)

"Worthless Notes Held by the Capital National Bank January 1, 1892."

100184	E. W. Mosher.....	\$10,600.
112008	E. W. Mosher.....	5,000.
101065	E. W. Mosher.....	12,730.01
101068	E. W. Mosher.....	8,631.20
101281	E. W. Mosher.....	5,000.
50101	E. W. Mosher.....	5,903.77
50102	E. W. Mosher.....	5,505.68
50105	E. W. Mosher.....	5,623.70
50104	E. W. Mosher.....	4,307.28
50105	E. W. Mosher.....	3,968.25
50106	E. W. Mosher.....	6,000.
50107	E. W. Mosher.....	1,438.82
50108	E. W. Mosher.....	6,881.18

50109	E. W. Mosher.....	5,963.86
101292	Western M'fg Co.....	5,000.
102093	Western M'fg Co.....	5,000.
102173	Western M'fg Co.....	2,500.
112013	Western M'fg Co.....	5,000.
112018	Western M'fg Co.....	5,000.
112072	Western M'fg Co.....	5,000.
112117	Western M'fg Co.....	5,000.
113007	Western M'fg Co.....	5,000.
113019	Western M'fg Co.....	5,000.
852		
113037	Western M'fg Co.....	5,000.
111187	Western M'fg Co.....	5,000.
111208	Western M'fg Co.....	2,500.
114010	Western M'fg Co.....	5,000.
102043	C. E. Turk.....	6,606.51
102047	Marsh & Hinds.....	1,000.
102040	C. W. & W. W. Marsh.....	3,600.
102041	Sycamore Marsh H. Co.....	4,500.
102044	Marsh Binder Co.....	9,000.
46665	W. A. Sharrer.....	7,103.76
50604	Mosher & Outcalt.....	5,218.72
50617	R. C. Outcalt.....	5,834.
50618	R. C. Outcalt.....	5,200.
50691	R. C. Outcalt.....	4,753.
50620	R. C. Outcalt.....	6,490.
50607	C. W. Mosher.....	5,000.
50615	C. W. Mosher.....	5,000.
50616	C. W. Mosher.....	7,000.
Total		\$223,859.74

853 Q. Now, Mr. Jones, have you made an examination of the books and documents and records of the bank to ascertain some of the assets that were carried in the bank at that time as notes or overdrafts that in your judgment were of no value?

A. I have prepared such a schedule.

Q. And in that schedule have you listed notes that were held by the bank at the time of its failure that had been executed by C. W. Mosher?

A. I have.

Q. And also the notes that were held by the bank purporting to have been signed by E. W. Mosher?

A. I have.

Q. And also the notes purporting to have been signed by R. C. Outcalt?

A. Yes sir.

Q. And also notes purporting to have been signed by W. H. Barstow?

A. Yes sir.

Q. And also notes purporting to have been executed by the Western Manufacturing Company by E. Hurlbut Jr. manager?

A. Yes, sir.

Q. Have you prepared that in schedule form?

A. I have.

Q. And does that schedule also show some of the overdrafts that were carried on the books of the bank as assets at the time of its failure?

A. It does.

Exhibit "WW" Identified.

854 Q. Is Exhibit "WW" the schedule to which you refer?

A. It is.

Q. And was that compiled from the books and records of the Capital National Bank?

A. It was.

Q. By you?

A. It was.

Q. And is it correct?

A. I think it is a correct schedule as shown by the books of the bank.

— Now you may state what were the amount of notes of various classes, that is notes of different individuals that were held at the time of suspension,—just give the name of the maker.

A. Notes of C. W. Mosher, \$85,281.67 R. C. Outcalt, \$54,146.66 Mosher & Outcalt \$5,832. E. W. Mosher \$107,085.45 Western Manufacturing Company \$235,000. Southern Stave and Lumber Company \$5,346.15 W. W. & C. W. Marsh, \$18,192. Note of W. A. Sharrar, \$7,153.76 W. A. Barstow \$8,062.02 making a total of \$526,299.71.

Some of the worthless overdrafts: C. W. Mosher \$2,927.59 C. W. Mosher & R. C. Outcalt, \$8983.36 E. Hurlbut Jr. \$1756.09 Western Man'f'g Co. \$1361.79; firm of Stark & Mosher \$1691.84 making a total of overdrafts \$16,720.65.

Mr. THOMAS: We offer in evidence Exhibit "WW", being the one from which the witness has been testifying.

"Partial List of Worthless Notes and Overdrafts on Hand at Suspension of Bank.

(Copy Follows.)

Notes of C. W. Foshier.

Note No.	Reg. page.	Date taken.	Date of note.	Due.	Amount.
50,632	288	Oct. 28, 1892	Oct. 27, 1892	Jan. 28, 1893.	\$10,000.00
132,000	180	Aug. 10, 1892	Aug. 10, 1892	Feb. 13, 1892.	1,948.33
50,637	288	Dec. 20, 1892	Dec. 20, 1892	Jun. 20, 1893.	5,000.00
50,644	288	Dec. 31, 1892	Dec. 30, "	Jul. 20, "	5,000.00
50,642	288	Dec. 28, "	Nov. 11, "	Mch. 14, "	20,000.00
50,643	288	Dec. 28, "	Dec. 12, "	Mch. 15, "	20,833.34
50,638	288	Dec. 24, "	Dec. 24, "	Jun. 27, "	17,500.00
50,633	288	Oct. 28, "	Oct. 28, "	Apr. 30, "	5,000.00
					<hr/>
					\$85,281.67

Notes of Edwin W. Mosher.

131,000	170	Jul. 6, 1892	Jul. 5, 1892	Jan. 8, 1893.	\$5,000.00
131,001	170	Jul. 6, "	Jul. 5, "	Jan. 8, "	5,000.00
131,002	170	Jul. 6, "	Jul. 5, "	Jan. 8, "	5,000.00
131,003	170	Jul. 6, "	Jul. 5, "	Jan. 8, "	5,000.00
134,007	200	Oct. 19, "	Nov. 19, "	Apr. 18, "	12,730.01
134,008	200	Oct. 19, "	Oct. 15, "	Apr. 18, "	10,600.00
134,009	200	Oct. 19, "	Oct. 15, "	Apr. 18, "	8,611.20
134,010	200	Oct. 19, "	Oct. 15, "	Apr. 18, "	5,000.00
134,011	200	Oct. 19, "	Oct. 15, "	Apr. 18, "	5,000.00

Note No.	Reg. page.	Date taken.	Date of note.	Due.	Amount.
136,005	220	Dec. 27, "	Dec. 27, "	Jun. 30,	2,500.00
50,101	312	Jul. 8, "	May 1, "	Demand	5,903.77
50,102	312	July 8, "	May 1, "	Demand	5,505.68
50,103	312	July 8, "	May 1, "	"	5,623.70
50,104	312	July 8, "	May 1, "	"	4,307.28
50,105	312	July 8, "	May 1, "	"	2,458.77
50,106	312	July 8, "	May 1, "	"	6,000.00
50,108	312	July 8, "	May 1, "	"	6,881.18
50,109	312	July 8, "	May 1, "	"	5,953.86
856					\$107,085.45
Notes of R. C. Outcalt.					
39,164	288	Dec. 28, 1892	Dec. 12, 1892	Mch. 15, 1893.	\$15,000.00
50,639	288	Dec. 24, "	Dec. 24, "	Jun. 27, "	12,500.00
50,641	288	Dec. 28, "	Dec. 11, "	Jul. 4, "	14,166.66
50,630	288	Jun. 18, "	Jun. 18, "	Dec. 21, 1892	6,000.00
50,629	288	Jun. 18, "	Jun. 18, "	Dec. 21, "	6,240.00
					\$53,906.66
Notes of W. H. Barstow.					
39,164}	3	Feb. 10, 1892	Oct. 3, 1890	Nov. 3, 1891.	\$80.00
101,007}	101	Mch. 24, 1892	Mch. 24, 1892	Jun. 25, 1892.	50.00
116,078		Apr. 5, "	Apr. 5, "	Jun. 7, "	100.00
116,107		Sep. 10, "	Apr. 2, 1891	Apr. 5, 1893.	1,300.00
46,653}	309				
1,165}					
46,604}	309	Sep. 10, "	Dec. 24, 1890	Jan. 4, 1894.	933.00
1,199}					

94,186	Nov. 9, 1891				306.20
46,724	Nov. 9, "	Apr. 9, 1891	Apr. 5, 1892		1,000.00
46,649					
1,061					
101,036	Feb. 10, 1892	Apr. 2, 1891	Nov. 4, 1891		500.00
1,138					
46,593	May 10, 1892	Dec. 24, "	Jan. 4, 1892		933.00
1,153					
111,047					
46,657	Sep. 10, "	Apr. 2, "	July 4, "		500.00
1,168					
46,658	Sep. 10, "	Apr. 2, "	Nov. 4, "		500.00
1,169					
46,710	Sep. 10, "	Dec. 24, 1890	Jan. 4, 1893		934.00
1,198					
46,603					\$6,830.00

Notes of Western Mfg. Co.

Signed by E. Hurlburt, Jr., Mgr.

122,018	160	Aug. 24, 1892	Jun. 17, 1892	Dec. 20, 1892	5,000.00
122,016	160	Jul. 30, "	Jun. 17, "	Dec. 20, "	5,000.00
131,017	160	Sep. 20, "	Jul. 21, "	Jan. 24, 1893	5,000.00
132,012	180	Oct. 19, "	Oct. 20, "	Feb. 25, "	5,000.00
132,009	180	Oct. 17, "	Aug. 6, "	Feb. 9, "	5,000.00
132,008	180	Oct. 17, "	Oct. 1, "	Feb. 4, "	5,000.00
132,010	180	Oct. 17, "	Aug. 14, "	Feb. 17, "	5,000.

Note No.	Reg. page.	Date taken.	Date of note.	Due.	Amount.
133,009	190	Oct. 10, "	Sep. 22, "	Mch. 25, "	5,000.00
133,011	190	Oct. 19, "	Sep. 19, "	Mch. 9, "	5,000.
857					
133,012	190	Oct. 19, 1892	Sep. 10, 1892	Mch. 15, 1893.	5,000.00
133,013	190	Oct. 19, "	Sep. 14, "	Mch. 17, "	5,000.00
133,015	190	Oct. 19, "	Sep. 27, "	Mch. 30, "	5,000.00
134,002	200	Oct. 17, "	Oct. 1, "	Apr. 4, "	5,000.00
134,040	200	Jan. 5, 1893	Jan. 5, 1893	Apr. 8, "	5,000.00
134,039	200	Jan. 5, "	Jan. 5, "	Apr. 8, "	5,000.00
134,038	200	Jan. 5, "	Jan. 5, "	Apr. 6, "	5,000.00
136,000	220	Dec. 9, 1892	Dec. 19, 1892	Jun. 22, "	5,000.
136,001	220	Dec. 10, "	Dec. 8, "	Jun. 11, "	5,000.00
136,002	220	Dec. 10, "	Dec. 8, "	Jun. 11, "	5,000.00
136,003	220	Dec. 10, "	Dec. 8, "	Aug. 11, "	5,000.00
136,008	220	Jan. 5, 1893	Dec. 19, "	Jun. 22, "	5,000.00
136,010	220	Jan. 6, "	Dec. 2, "	Jun. 6, "	5,000.00
137,002	230	Jan. 5, "	Jan. 3, 1893	Jul. 6, "	5,000.00
137,001	230	Jan. 5, "	Jan. 3, "	Jul. 6, "	5,000.00
137,001	230	Jan. 5, "	Jan. 3, "	Jul. 24, "	5,000.00
137,001	230	Jan. 21, "	Jan. 21, "	Jul. 18, "	5,000.00
134,004	200	Oct. 17, 1892	Oct. 1, 1892	Spr. 18, "	5,000.00
134,013	200	Oct. 27, "	Oct. 22, "	Apr. 25, "	5,000.00
135,005	210	Nov. 30, "	Nov. 26, "	May 29, 1893.	5,000.00
133,014	190	Oct. 19, "	Sep. 22, "	Mch. 25, "	5,000.00
134,003	200	Oct. 17, "	Oct. 1, "	Apr. 1, "	5,000.00
131,010	170	Jul. 26, "	Jul. 25, "	Jan. 28, 1892.	5,000.00
118,004	120	Feb. 15, "	Feb. 3, "	Aug. 6, 1892.	5,000.00
131,011	170	Jul. 26, "	Jul. 25, "	Jan. 28, 1893.	5,000.00
133,003	190	Sep. 20, "	Sep. 1, "	Mch. 9, "	5,000.00

133,004	190	Sep. 6, "	Sep. 6, "	Mch. 9, "	5,000.00
133,781	Not on Disc. Reg.	Sep. 13, "	Sep. 13, "	Mch. 17, "	5,000.00
136,081	Not on Disc. Reg.	Dec. 15, "	Dec. 15, "	Jun. 13, "	5,000.00
135,042	Not on Disc. Reg.	Jan. 10, 1893	Jan. 10, 1893	Mar. 15, "	5,000.00
133,681	Not on Disc. Reg.	Sep. 13, 1892	Sep. 13, 1892	Mch. 15, "	5,000.00
133,002	190	Sep. 15, "	Sep. 15, "	Mch. 28, "	5,000.00
133,005	190	Sep. 29, "	Sep. 15, "	Mch. 18, "	2,500.
858					
132,105	Not on Disc. Reg.	Aug. 16, "	Aug. 16, "	Feb. 16, "	5,000.00
141,017	Not on Disc. Reg.	Aug. 29, "	Aug. 29, "	Aug. 4, "	5,000.00
134,005	200	Oct. 17, "	Oct. 15, "	Apr. 18, "	5,000.00
133,000	190	Sep. 9, "	Sep. 6, "	Mch. 9, "	5,000.00
135,003	Not on Disc. Reg.	Nov. 23, "	Nov. 23, "	May 23, "	5,000.00
133,041	Not on Disc. Reg.	Dec. 17, 1889	Dec. 17, 1889	Mch. 17, "	2,500.00
	Lost note (Isperming Nat. B'k, Mich.)	Rec. Certificate No. 1094			5,000.00

\$235,000.00

Note on B/R. held by 1st Nat. B'k, Poultney, Vt.

Marsh Notes.

122,010	160	Jul. 5, 1892	Jun. 25, 1892	Dec. 28, 1892	4,500.00
102,047}	3	Mch. 10, "	Jun. 20, 1891	Dec. 23, 1891	1,000.00
39,167{	160	Jul. 5, "	Jun. 25, 1892	Dec. 28, 1892	3,600.00
122,011	160	Jul. 5, "	Jun. 18, "	Dec. 28, "	9,000.00
122,012	2	May 15, 1891	Aug. 16, 1891		92.00
39,131}					
98,247{					

\$18,192.00

So. Slave & Lbr. Co. Notes.

132,078	181	Nov. 26, 1892	Jul. 4, 1892	Feb. 7, 1893	5,546.15
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C. W. Mosher & R. C. Outcalt Note.

50,636	288	Dec. 1, 1892	Dec. 1, 1892	Jun. 4, 1893	5,635.00
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W. A. Sharrar Notes.

131,141	172	Nov. 18, 1892	Nov. 18, 1892	Jan. 20, 1893	50.00
46,665	315	Jul. 31, 1891	Nov. 6, 1889	Jun. 26, 1892	7,103.76
					<hr/> \$7,153.76

C. E. Tuerk Note.

122,015	160	Jul. 22, 1892	Jun. 25, 1892	Dec. 28, 1892	7,289.10
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Summary of Note Statement.

C. W. Mosher	85,281.67	
R. C. Outcalt	54,146.66	
Mosher & Outcalt	5,832.00	
E. W. Mosher	107,085.45	
Western Mfg. Co.	235,000.00	
So. State & Lumber Co.	5,346.15	
W. W. & C. W. Marsh.	18,192.00	
W. A. Sharrar	7,153.76	
W. A. Barstow	8,062.02	
		<hr/>
		\$526,299.71

Some of the Overdrafts at Suspension.

C. W. Mosher	2,927.59	
C. W. Mosher & R. C. Outcalt.	8,983.36	
E. Hurlburt, Jr.	1,756.09	
Western Mfg. Co.	1,361.79	
Stark & Mosher	1,691.84	
		<hr/>
		16,720.65
		<hr/>
		\$543,020.36

860 Q. Now Mr. Jones have you made an examination of the books, documents and records of the bank to ascertain some of the losses it had sustained up to July 1st, 1891?

A. I have and prepared a schedule thereof.

EXHIBIT "XX" identified.

Q. Is Exhibit "XX" the schedule to which you refer?

A. It is.

Q. And by whom has that been compiled?

A. By myself.

Q. From what sources of information?

A. The books and records of the Capital National Bank.

Mr. THOMAS: We offer in evidence Exhibit "XX".

Mr. ROSE: May I ask one question?

The COURT: Go ahead.

By Mr. ROSE: Do the books of the bank openly show those losses,—are they charged to Profit and Loss account?

A. No sir, they were not charged to Profit and Loss. The account wouldn't be large enough.

The COURT: How do you arrive at the conclusion that you have if the books do not show it?

A. In my answer—Mr. Rose's question to me was whether the books showed the losses,—whether they were marked as losses in the books. Now the books don't show—for instance, the books shows the Donnell, Lawson & Simpson notes; it gives the name of the maker, and the number, the date and the amount. Now I have considered

in my statement the Donnell, Lawson & Simpson notes as valueless, because they had failed in 1883, and these notes which I testify to are made in 1890 and 1891.

The COURT: You may proceed.

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EXHIBIT "XX" Received in Evidence.

(Copy follows.)

Losses Sustained by Capital Nat'l Bank Prior to July 1, 1891.

Donnell, Lawson & Simpson a/c (Schedule A-6)	\$28,174.70
Donnell, Lawson & Simpson Notes (Schedule 7-A)	30,500.00
Collection a/c Marsh Bros. Mosher & Co. (Schedule 5-A)	14,578.00
Stock & Bond account (Schedule 5-B)	30,000.00
Certificate of Deposit No. 17969 issued to C. H. Willard for \$40,000 Bank received nothing when this C/D was issued	40,000.00
Certificate of Deposit No. 21379 issued to J. E. Hill, Dec. 23, 1889 for	\$50,000.
Books show bank received when it was issued	3.00
<hr/>	
(Ex. 146 V. 3, Pg. 315)	
Loss	49,997.00
Dividends paid out, (Books show no dividends earned as losses exceeded Capital at time they were paid)	211,000.00
Fraudulent certificate of deposit No. 24452 issued in name of J. E. Hill for which bank received nothing	100,250.00
Fraud Dec. 21, 1889, in account of "State Treasurer"	100,000.
Bills of Exchange a/c, (Schedule 8-A)	29,968.
Worthless notes in bank, (Schedule 20-A)	183,183.17
<hr/>	
Total Losses	\$817,650.87

862 Q. Mr. Jones, where you refer, for instance, to Certificate of Deposit to J. E. Hill as \$100,250.00, why do you class that as a loss to the bank?

A. Because the books of the bank show that the day this certificate of deposit was issued there was a false charge to the certificate of deposit account of \$100,000.00. In other words, the Certificate of Deposit account on that day shows such a certificate paid, when the books and records of the Capital National Bank show that there was no such a certificate of deposit outstanding at that time; therefore, this certificate must be worthless.

Q. And you refer to an item here of \$100,000 in the account of State Treasurer. Why do you count that a loss?

Mr. ROSE: You have gone over that, explained that in detail haven't you, in your testimony heretofore?

A. Some of them I have.

Q. Well this certificate of deposit about which inquiry has been made, you have given your explanation of that once, haven't you?

A. Yes sir, I did.

Q. Why do you call the Collection Account, \$14578.00 a loss?

863 A. Because there was \$10,000 of that account eliminated by the use of a knife, and the same amount was charged to one of the Omaha banks, and at a later date that account was closed up; on December 16th, 1889 the balance of this account was charged to bills receivable, and the same amount was credited to this account and closed the account.

Q. That was what you referred to as an overdrawn collection account?

A. Yes, sir.

Q. Are there any other items in this Exhibit "XX" that you want to explain, that you have not heretofore explained?

A. Did I testify yesterday as to the amount of dividends paid out up to July 1st, 1891?

The COURT: Yes sir.

A. That was the total amount that had been paid out,—but up to July 1st, 1891 there had only been paid \$211,000.

Q. Have you prepared any schedules showing the losses sustained at any other dates?

A. No sir.

Q. Now Mr. Jones, you have been cross examined with reference to whether these losses had been charged to Profit and Loss. Now did you examine the books of the bank beginning with its existence as a national bank,—beginning with the name of Marsh National Bank and up to the time of the suspension of the bank to ascertain if at any time anything was charged off to Profit and Loss, or any similar account,—that is,—any of its bills receivable or bad assets were charged off, as shown by the books?

864-875 A. I have made such an examination.

Q. What did you find from that examination?

A. I have never been able to find anything charged off. That is, charged up to Profit and Loss Account. It is true that the surplus account was reduced some \$24,000., as I remember. The books do not disclose on the day that the surplus was reduced that any bills receivable, or anything of a like nature was taken out of the accounts of the bank.

Q. Or that any apparent asset was taken out?

A. No sir.

Q. Either in the form of bills receivable or overdrafts?

A. No sir.

* * * * *

876 Cross-examination:

By Mr. ROSE:

Q. What experience as a public accountant have you have?

A. Tell me what you mean by a public accountant.

Q. Following the profession of an accountant.

A. I never followed the profession of an accountant.

Q. What experience have you actually had in bookkeeping?

A. About thirty years.

Q. What books did you keep?

A. I worked on the books of the State Bank of Nebraska; the Jones National Bank, the Bank of Bee, the Bank of Tamora the Bank of Goehner, and others.

Q. Worked regularly on those books?

A. Principally with the Jones National.

Q. Did you keep the books of the Jones National Bank in your own personal hand?

A. In the early history of the bank I kept certain books of the bank daily.

Q. What books did you keep?

A. The journal and the Remittances.

Q. In actual practice does a bookkeeper check over his own entries, where he transposes balances, does he check them back to see if he has them correct?

A. In a case where he strikes his balance, if it doesn't balance then he would check back, but if it balances he knows his work is correct.

Q. Is it common for a bookkeeper to find that his books will not balance sometimes?

A. Oh yes, that happens.

Q. And have to hunt for the error do they?

A. Yes, sir.

Q. Now when they find an error what do they do?

877 A. Correct it.

Q. How?

A. That is done in different ways, in different books, and owing largely as to where the error is.

Q. Well describe the methods, that is what I asked you.

A. If you will ask me so I can get at what you want I will try to.

Q. You say it is the duty of the bookkeeper to correct an error if it appears in the figures in carrying over? The way to discover an error is to check back, and see whether the items are properly transferred isn't it?

A. To a certain extent, yes.

Q. And test out to see whether they got on the right side of the book always,—the debit or credit side.

A. That would be one way.

Q. And if the books do not balance it is evidence that there has been an error in bookkeeping, an item has been omitted or something.

A. It is evidence that there has been an error made of some character; it might not always be on the book, Mr. Rose; it might be in striking the difference and carrying it forward.

Q. Well that would be in the books?

A. No, that might be on a piece of paper.

Q. Your entry in the book then would be erroneous just the same.

A. Not necessarily. Suppose one side of your journal showed \$743,000., and the other side would show \$249,000 and then in

deducting one from the other you might make an error in your subtraction, and if you did and carried that amount forward, it would be an error while your journal would be correct.

878 Q. Still there would be an error in the ledger.

A. Well yes.

Q. The amount carried over would be an erroneous subtraction or addition as the case might be?

A. Yes sir.

Q. Well now when that error occurred you have already explained that it was the custom and practice to correct *to* the books to conform to the facts. Now in ordinary and common practice how would that correction be made?

A. It is ordinarily done by erasing the wrong figure and placing in its place the proper one.

Q. And what means are ordinarily employed to accomplish the erasure,—what instrument or tool?

A. Why an eraser,—a metallic eraser.

Q. Is it an edged tool?

A. Oh yes, steel eraser.

Q. Well now if you go back over a set of books and find that corrections have been made, can you tell at this time whether it is a jack knife or eraser that has been used?

A. No sir, a jack-knife would do just as good a job, if it was in the same condition as if it was an eraser.

Q. If it is a good job of erasing does it leave any imprint of the original figure?

A. Yes, sir.

Q. You can read what was the original figure right through, after it has been erased?

A. Oh, no.

Q. Well that is what I meant,—you couldn't do that?

A. No.

Q. Now when you take a book that has been erased,—I suppose the man who makes the erasure knows what figure he erased, at the time, at least. In the case of a transfer, to the Marsh National

Bank books of the ledger balances of Marsh Brothers and
879 Mosher, can you see what the original entry was at this time in every instance?

A. I think not.

Q. Then you arrive, of course, at your conclusions from what naturally would have appeared if the original balances had been carried over correctly, do you—you presume in stating that that amount was \$10,000, for example, that originally the ledger balances of the old institution has been correctly transferred into the books of the new institution, do you?

A. I don't remember.

Q. You said the figure "1" had been erased.

A. In the Collection account.

Q. In the Collection Account in the tens of thousands column.

A. Yes, sir.

Q. And yet, you can't see at present the figure "1",—the original?

A. No.

Q. And you never did see the figure one on the page?

A. No.

Q. Then I was just giving you a chance to testify here why you state positively, of your own knowledge that the figures "1" was erased.

A. That is very easy. Because there is nothing in the ledger account, and nothing on the journal that gives any authority for taking that ten thousand away; that was taken away by main strength; no entry in any of the books to authorize it.

Q. So you are presuming that originally the entry did conform to what the ledger balance should be.

A. I arrive at that conclusion from the fact that the ledger account shows it at \$10400, and some odd dollars, and then it was transferred to the General Balance book,—I couldn't tell what that amount was, only the books shows an erasure of ten thousand dollars, and there is nothing to justify even the erasure or the deduction of that amount.

Q. So you arrive at that as a deduction from the related items in the books of account?

A. Yes sir, and not from the simple fact that it was erased.

Q. You don't pretend that you ever did see the figure that was erased?

A. Oh no.

Q. So you testify to that from conclusion, or grounds that you think justify your conclusion.

A. Yes sir, that the book shows an erasure.

Q. What significance as a bookkeeper or accountant do you attach to the fact that Mr. D. E. Thompson borrowed at times some money from this bank,—what significance do you attach to that fact, if any?

A. My own opinion of it?

Q. Yes,—what significance do you attach as an expert to the fact that he borrowed money from the bank?

A. A bank properly run, the officers of that institution never borrow part of the capital,—or two or three times the amount of the capital of that bank; that is the first institution of that kind that I ever knew of.

Q. I asked what specific significance you attach to Mr. Thompson's loans. First,—what is the highest sum that Mr. Thompson ever borrowed?

A. At any one time?

Q. Yes sir.

A. Let me have the ledger account.

Q. Can't you recall it?

A. Why I would say from memory, \$10,000.

881 Q. And how many times in the history of the bank did he owe the bank as much as ten thousand dollars as you recall from your examination?

A. I wouldn't want to testify from memory.

Q. Do you recall more than one instance?

A. I have no recollection off hand of him ever making a note for even \$10,000 only once.

Q. I don't refer to his making a note of \$10,000. I have reference to the aggregate of his indebtedness to the bank at any one time.

A. I will look at the ledger account and then we will get it right. Yes sir.—\$10,000.

Q. There was only one time,—only one period during the history of the bank when Mr. Thompson owed it as much as \$10,000.

A. That is correct.

Q. Most of his loans were demand loans, shown to have been taken for temporary periods only, weren't they?

A. My schedule doesn't show the length of time that the various loans were made for.

Q. You have that Thompson schedule?

A. Yes, sir.

Q. It shows when the loan was paid, doesn't it?

A. It shows the date the loan was made and the date of payment and the amount.

Q. Well just compare those two and you will see that uniformly the note was paid at very short intervals after it was made, wasn't it,—with one exception of four months?

A. I was going to say that it runs from a few weeks to a few months.

Q. And there is only one instance where there is as much as four months?

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A. It would take quite a little time for me to go over it.

Q. Did you find any loan that he ever made that wasn't

paid?

A. No sir; the books show that every note that Mr. Thompson ever gave is marked paid.

Q. Now what significance do you attach to the fact that the total of his loans, just running along during the period of the bank from 1881 to January, 1903, was upwards of \$73,000. What significance do you attach to that fact?

A. Simply shows the volume of money which he had borrowed of the bank between those dates.

Q. You mean it shows the aggregate of all notes he ever had in, for a day or a week, or anytime,—it shows the total of all of them.

A. It shows the total amount of money he had borrowed of the Capital National Bank.

Q. Does it show any renewals?

A. The set of books kept by the Capital National Bank doesn't necessarily state when a note was paid off whether it was paid by renewal note, check or cash, or anything else,—it simply shows payment.

Q. But you must admit that an *account* will search the relation of one entry to another, won't he? And if on a day of payment a like sum enters you conclude it is a renewal?

A. Very often, yes sir.

Q. Did you find that any of these notes were renewals?

A. I didn't examine as to that. I will if you want me to.

Q. I just wanted to find out the scope of your examination. Now to begin with, you haven't scheduled any of Mr. Thompson's notes as losses have you?

A. No sir.

Q. You haven't scheduled him as one of the insolvent
883 borrowers have you?

A. I have not.

Q. And you have no information that would justify you in listing his paper in such manner?

A. I consider him solvent.

Q. And so far as you know of its history he was solvent during the period of the bank's existence?

A. I never knew anything to the contrary.

Q. Did you ascertain the total of the funds that were deposited by Mr. Thompson in that bank?

A. No sir.

Q. Did you make any inquiry at all to see how heavy a depositor he was?

A. No sir.

Q. Assuming that he deposited during that same period upwards of half a million dollars, making that his active account, and leaving there the proceeds from his various personal enterprises,—the deposits or proceeds of the various enterprises, which was in that bank, and that they run up to over half a million dollars during that period, would you regard as significant the fact that during that same period the total of his notes during that same period was \$73,000?

A. In the first place I think the statement of the amount of money that Mr. Thompson had deposited in that bank to his personal account is a little overstated.

Q. Well that is just assuming, but suppose it is true that he had deposits from 1884 to the time it closed of upwards of half a million dollars?

A. At the time it closed he had twenty dollars and some cents in there.

Q. Just assuming this fact to be true, that from 1884 when
884 he first connected himself with the Capital National Bank up to the time of its failure, he had deposited half a million dollars and upwards, would you regard it worth mentioning that he had during that same period borrowed in the aggregate, from time to time, or had notes of \$73,000 in there?

A. No, I don't see any connection between those two subjects whatever.

Q. Is it customary to loan money to a good depositor, if he has demand occasionally for it?

A. A bank?

Q. Yes sir.

A. Always. A bank tries to loan all the money it can, and keep within the pale of the law, to good borrowers.

Q. Is it the custom of a bank to take care of good depositors?

A. A bank always loans as much money as it can.

Q. To its reliable customers.

A. Certainly.

Q. Accommodates good solvent depositors, if it is run right, doesn't it?

A. Yes, sir.

Q. Well have you examined to know if the amount of his loans were at all out of proportion or extravagant, in proportion to his deposits?

A. I never examined, as you state, the amount of money that Mr. Thompson deposited in his personal account during the existence of the bank. I did look at his account the last two months of the existence of the bank.

Q. Well it appeared that the last two months that he didn't keep his active account, his active personal account there didn't it?

A. I couldn't say; it run down to a very small amount.

Q. It would indicate, if he was a man of any business affairs that he didn't keep his active account there, wouldn't it?

A. I couldn't answer that. All I answered is what I found in the books.

Q. Now did you find any notes of E. P. Hamer ever taken into that bank?

A. No, I found no notes of Mr. Hamer.

Q. So far as the record shows he never was a borrower of a far-thing?

A. Not as I saw.

Q. Was A. P. S. Stuart ever a borrower of that bank?

A. He was.

Q. How much?

A. As my memory serves me, he made two loans of two to three thousand dollars,—something like that.

Q. They were not enough to be significant at all?

A. No, I didn't so consider them.

Q. And the loans of Mr. C. E. Yates, you wouldn't consider as significant?

A. Not taken by themselves, no.

Q. They didn't indicate any reckless resort by him to the funds of the bank?

A. No sir, not the amount that he ever borrowed himself.

Q. Did you check out to see what relation his little loans had to his own deposits?

A. No sir.

Q. He never exceeded over \$5,000 at any one time, did he?

A. That is my memory.

Q. The maximum was \$4600., and he never had a large loan in the bank. Now the loans of Yates and Stuart were also paid weren't they?

A. The books show them paid, yes sir.

Q. Outside of the managing officers, Mosher and Outcalt, there wasn't a director of that bank that ever borrowed money and it wasn't repaid within a reasonable time, was there, so far as your examination has shown?

A. The books disclose—they show them paid.

Q. That is, every note of every director, outside of Mosher and Outcalt, was shown to be paid?

A. No, you overlooked Mr. Cap. Phillips.

Q. Did he die with a note in the bank?

A. He did.

Q. What was the amount of his loan?

A. My memory is \$1,000.

Q. Wasn't that paid to the Receiver by his estate?

A. Yes sir, it was paid after the bank failed.

Q. So there was no loss by any of the directors was there other than Mosher and Outcalt,—so far as the books show, and so far as the receiver's records show?

A. So far as the books show.

Q. Did you examine to see whether Phillips had been a heavy depositor in the bank?

A. No sir, I didn't.

Q. Now it was only for a short period that W. W. Holmes was a heavy borrower wasn't it?

A. From 1884 to November, 1890; he was a borrower up to the time of his death.

Q. Yes a borrower, but how many times did his borrowings over-reach \$30,000,—for how long a period of time?

A. He became,—well from March 26th, 1887 that starts at \$37,000. Then it runs up to \$75,000,—\$76,000,—

Q. When does he get down to less than \$30,000?

A. June 18th, 1887.

887 Q. And when did he first get beyond \$30,000?

A. March 26th, 1887.

Q. Now there were some periods after those few months where he was above \$30,000?

A. Yes sir, it varied.

Q. But not for long periods.

A. No sir.

Q. Now what significance do you attach to that?

A. The simple fact that the books show that at various times the directors of the bank had borrowed more than the entire capital of the bank.

Q. That one director?

A. The directors. This man you are speaking of is one of the directors.

Q. Have you figured out, or made out a balance sheet so you can identify that fact?

A. No, but I can figure it out.

Q. Have you figured out a ledger account showing when the directors at one time had in excess of \$300,000 out of that bank?

A. No sir I have not. Just take the figures as they run in this ledger account. Each one of those is what I call a ledger account or balance sheet.

Q. These have never been assembled and made into a grand ledger total.

A. No sir, not to my knowledge.

Q. Have you struck a grand total for any day?

A. No sir.

Q. How can you say that if you haven't figured it up, that on

any day they borrowed more than the capital,—or can you verify that the grand total would be more than that?

A. I just spoke that in an off-hand way. That was the object I had in getting that list to show that the directors of the bank were exceedingly heavy borrowers.

888 Q. It doesn't appear that they were all heavy borrowers?

A. I don't mean that they all joined on the same note.

Q. Do you know Holmes' standing at the time of his death? He was one of the largest land holders in the state of Nebraska; he left his family opulent; his boy is one of the most opulent men in the state, received from his father W. W. Holmes.

A. That might be. I knew in a general way that Mr. Holmes had considerable property.

Q. And you would regard his loan for any reasonable sum altogether safe?

A. Yes sir, but I wouldn't as a banker loan one man over \$70,000 when the capital was only \$300,000, when I was a sworn officer to see that that wasn't done.

Q. That is a general Administration rule, you know that, don't you?

A. Yes sir. I know the contrary is true also, that whenever you violate the banking law your charter is subject to forfeiture.

Q. But sometimes a temporary loan to a depositor, assuming he is a valuable depositor and a man of great wealth, is really justified isn't it, even though you rediscount some of it, and is a common practice in banking, isn't it?

A. Not in a national bank and where it is run according to law those things are not countenanced.

Q. But I said in practice.

A. Why in practice my opinion is that among bankers it is to obey the law.

Q. But you couldn't think that the condition of this bank was in any way impaired by any loan that Mr. Holmes made?

A. I couldn't say that it was.

Q. Nor that the condition of this bank was in any way impaired by any loan of any director, excepting the managing officers of the bank themselves, Mosher and Outcalt?

889 Q. You couldn't say that you ascertained that the assets of the bank had been in any way impaired by any loan to any director, other than to Mosher and Outcalt?

A. No.

Q. Did you ascertain that during the last year of the bank's existence Mr. Thompson made another bank connection in Lincoln,—the American Exchange National Bank?

A. Yes, sir.

Q. You knew that?

A. Yes sir.

Q. And became vice president of that bank?

A. Yes sir.

Q. Now calling your attention to the credit of \$100,000 to—or was it \$100,250 to state treasurer Hill's open account?

A. It was \$100,000.

Q. In case that \$100,000 had gone into the teller regularly as a deposit, how would that fact be shown by the books of the bank?

A. If it had gone in in cash?

Q. Yes.

A. The cash would have shown an increase of \$100,000.

Q. How would the item be shown, or entered in the books of the bank?

A. If it were cash?

Q. Yes sir.

A. Simply by the increasing of your cash to the extent of \$100,000.

Q. How would the item be entered upon the books as a separate transactions?

A. No cash coming in.—

Q. Maybe I am not quite clear. How would that specific transaction of \$100,000, separate and distinct in itself, be shown on 890 the books of the bank?

A. As far as the cash is concerned?

A. No, no. How would the specific item of \$100,000 be entered on the books of the bank as a specific item of \$100,000?

A. I don't understand the question, Judge.

Q. Just turn to that balance book where that entry is made, Mr. Jones.

(Witness complies.)

Q. Mr. Jones, how is the cash of the bank arrived at?

A. The difference between the debit and credit sides, as shown by your journal.

Q. And entered in the books as one gross item?

A. Yes sir.

Q. There is no cash account of this bank that gives the detail of the items that make up the cash is there?

A. Not a complete account, no sir.

Q. When a deposit is made, where is the amount of that deposit entered on the books of the bank?

A. On the individual balance ledger.

Q. And what does an entry of a credit in the individual balance ledger import?

A. Cash or its equivalent has been received to the amount of the deposit.

Q. Is there any other way of indicating that fact on these particular books?

A. No sir.

Q. Then the entry of \$100,000 credit to the account of State Treasurer would import, so far as the book entries are concerned, that cash or its equivalent in that sum, had come into the bank?

A. Yes sir, if it was a genuine transaction.

Q. Well whether it was a genuine transaction or not,—the 891 books would import that it was a genuine transaction of that sort?

A. No sir.

Q. The entries in the books of account are supposed to import a transaction, aren't they?

A. Yes sir.

Q. The import of any entry of that kind is that the money was deposited, or its equivalent?

A. If you take one item alone.

Q. Yes sir, take one item alone,—that is what I am asking about.

A. Yes, sir.

Q. Now in the case of any other deposit on this day, or any day for example, the entry that imports the deposit is the entry in the individual deposit account, is it not?

A. Yes sir, if it is a personal account.

Q. Well now—or if it is an account of any of the depositors?

A. Yes sir. The reason I spoke that way, the individual balance book carries the accounts of the individuals and Certificate of deposit accounts.

Q. Yes, that is correct. Now what you found then in respect to this \$100,000 item, so far as its separate entry in the books is concerned, is what you would find in the case of any other depositor, isn't it?

A. Yes, sir.

Q. And there would be no specific or separate entry of the transaction in the book other than that one entry to indicate that the money had gone into the bank?

A. I think there would.

Q. Well now I just asked you a moment ago whether there was any other entry of the deposit, and I understood you to say there wasn't.

892 A. Then why do you ask the same question again, only put it in another form?

Q. Because I thought that was the necessary deduction, to show that your statement that there was no money came in was a mistake. There wouldn't be any other entry than the entry on the deposit ledger to indicate that the money came in,—I mean as a history of that one individual transaction?

A. No specific entry other than that.

Q. Then if that is true what significance do you attach to this one because of the fact that there is no other record in the books?

A. There is.

Q. Of this transaction?

A. This coupled together with the other transactions of the same day's business.

Q. Did you figure out in detail a number of the other transactions of that same day through the journal and cash books?

A. I have.

Q. Did you make a schedule of that?

A. No sir. There is a schedule already made in the books themselves and all you have to do is to foot them.

Q. Foot what?

A. The various accounts.

Q. That is the deposits account alone?

A. The various accounts and transactions of that day's business and strike your difference.

Q. The only one significant fact of it all is the fact that if the books were correctly footed it would throw them out of balance?

A. Yes sir.

Q. That is the only real significance of it, isn't it?

A. No, there is another.

893 Q. Suppose if they were correctly footed they would be in balance.

A. They wouldn't be in balance.

Q. Well if the transaction- were correctly recorded.

A. Yes, but the transactions in this case are not, and that is the reason the books are out of balance \$100,000.

Q. And that is the significant fact, isn't it?

A. That they're out of balance \$100,000, yes sir.

Q. Now I wish you would tell me what would be the difference in effect, as to the books balancing, as to whether that entry did not represent an actual deposit, or as to whether it did represent an actual deposit, and the man charged with cash had abstracted \$100,000,—what would be the difference?

A. As far as the bank is concerned it wouldn't make any difference whether the receiving teller had stole \$100,000 or whether they had put the fraudulent credit to a man's account.

Q. And when the only significant fact is that the books were thrown out of balance, how can you tell from that transaction whether it was one form or the other?

A. I went farther than what these books show. I went to the state treasurer and to the state treasurer's pass book.

Q. Do you find an account "State Treasurer R. D."

A. That refers down here, Mr. Rose (indicating on book). That is on this dividing line here. You see between the two head lines is a light blue line. Now then the treasurer's account doesn't go below that blue line. This name here was put in and then they wrote that above to put it below that other line. State Treasurer Hill was the gentleman's book that I inspected and talked with.

Q. You just had his hearsay statement for that?

A. No, no; I saw his book and examined it.

Q. That book is not produced?

A. That was Mr. Hill's private pass book.

894 Q. That is not produced here so we can have access to it?

A. No sir, we took his deposition.

Q. On the face of these books alone how could you tell what the transaction was?

A. I would know when I run over the business of that day that something was wrong to the extent of \$100,000, because the transactions of that day show that there is a shortage in cash of an even \$100,000, barring a few cents.

Q. Now if that man's account run through and was checked out, it would mean merely an abstraction of the money by the state treasurer, of \$100,000, would it,—in the end?

A. No sir.

Q. Have you run his account through to see whether he got the benefit of that credit?

A. He did.

A. And checked it out?

A. He did.

Q. Checked out \$100,000 of the bank's money, and not his own?

A. No sir, he checked out his own money.

Q. Then what makes you say this money wasn't deposited?

A. There was no such deposit made that day.

Q. Had there been a like deposit made the previous day?

A. There had been a deposit made at a prior date, and that had been abstracted, but put on the state treasurer's book at the correct amount and carried into the books of the bank an even \$100,000 short.

Q. What item was that,—the prior item, did you identify that?

A. No.

Q. How do you know then?

A. Because the state treasurer's pass book showed that on a certain day he deposited in round numbers something like one hundred and eleven, or one hundred and twelve thousand dollars, and there was that much put on the state treasurer's pass book, but in entering it on the books of the bank it was just cut short an even hundred thousand dollars.

Q. What day was that?

A. That was during the month of December 1889; I couldn't give you the exact date; I can get the book.

Q. During this same month?

A. Yes sir.

Q. Well the balance book is here for that same month.

A. I say I will go and get it.

Q. Well this is December 1889 right here before us.

A. Yes sir. I will explain further. When this was done that was in the name of J. E. Hill, treasurer. That account was closed and for some reason, unknown, this account under the name of State Treasurer was opened, and that balance carried forward under this account. State Treasurer Hill's pass book was labelled "J. E. Hill, treasurer", and not as this account is here transferred under the name simply of "State Treasurer".

Q. Then you would have to go back and find that under the name of Hill, treasurer, instead of State treasurer?

A. Yes, sir.

Q. That entry has not yet been identified, has it?

A. No, I haven't testified to it, only as it has been brought out now.

Q. Is Hill's pass book here that you refer to?

A. It is not.

Q. Was there any account of the Relief Fund kept in this bank as a deposit?

A. Yes, sir.

Q. Under what name?

A. The Nebraska Relief Fund.

896 Q. Now with reference to the Certificate of Deposit account. Is it not true that each balance book had a certificate of deposit account run in it?

A. No sir, that can't be right.

Q. Or were they all run in one book?

A. Yes, sir.

Q. They were all a part of the same account weren't they?

A. Not so indicated on the books.

Q. But in fact.

A. I couldn't tell only what the books show.

Q. Entries were made under the letters of the alphabet indiscriminately in each account weren't they?

A. No sir.

Q. Describe how they are kept.

A. This is Individual Balance Book "2" I have open before me for November and December, 1889. This shows C/D, which indicates Certificate of Deposit No. 1. On the second line below, the same thing, C/D No. 2. Now then you see they had through their existence four different accounts; at the time they closed they had accounts, as I remember it, No. 1, 3 and 4. They dropped out No. 2,—or they dropped out one, I don't know which one it was.

Q. Were they all active at one time?

A. That is owing to what you would term active; if you would term red ink lines a dead account, they wouldn't be, but what you mean I suppose is that they made charges and credits to the various accounts.

Q. Yes sir.

A. Yes sir, in a majority of instances.

Q. How were those transferred to the General Balance book?

A. They are a part of the footing, included under the head of deposits.

897 Q. It takes all of those accounts—they all form a part of the certificate of deposit account?

A. The accounts in this book?

Q. No the certificate of deposit Nos. 1, 2, 3 and 4?

A. Yes, sir.

Q. There is, properly speaking, only one certificate of deposit account?

A. They kept from one to four.

Q. How did they distribute their entries into those different accounts; did you ever figure that out?

A. No sir.

Q. Do you know whether they had any system of distributing the entries in the different accounts?

A. I have discovered no particular system for keeping those four accounts.

Q. Now without any system they might pay and charge or credit into one account more certificates than were justified, mightn't they?

A. That is what the books show they did do.

Q. And so far as they did that they would relieve another numbered account?

A. There would be that many less certificates to be paid.

Q. In the other account.

A. Or accounts, yes sir.

Q. Now you take the general certificate of deposit account the three parts, and suppose that one account which had not been credited, or charged—which did you call it originally when it is deposited?

A. It is credited to that account and charged to it when it is paid.

Q. Suppose in one instance, the deposit evidence, by the certificate had not been credited into C/D No. 1, but had been charged to C/D No. 1 when it was paid, it would operate to make an overdraft wouldn't it?

A. If the certificate was larger than the account showed a credit, it would.

Q. Even though the transaction was regular.

A. No it couldn't be regular. Now they had some reason for having these various accounts.

Q. Have you figured out that reason?

A. No, if I had the entire set of books and had time I could. I could make up an entire new set of books and get the exact facts.

Q. Suppose, for instance, by some arbitrary method we would just start certificate of deposit accounts number one and number two. We made the first entry to number one of a credit of \$100. The second entry we made of a credit of \$1,000 to number two, and they were run in that form, and kept separate balances, and when the \$1000 certificate credited, was paid, it would be charged to account number one, what condition would that show number one to be in?

A. It would show an overdraft.

Q. Yet the general certificate account, when it was assembled and footed all in one item, wouldn't show an overdraft would it?

A. No sir.

Q. So unless we figure out the system, if it is apparently a haphazard entry into one division or another of the account there might be an overdraft shown in number one, or number two without the whole account of certificates being overdrawn, isn't that true?

A. Yes sir,—that is, you mean the sum total of them.

Q. Yes sir, that is what I mean.

A. Yes sir.

Q. Now you take the status of these accounts at the close. You say that two of them were overdrawn, weren't they?

A. The books showed three accounts two of them overdrawn, and one with quite a good sized credit to it.

Q. Now while that was true of two individual accounts, when all of the accounts, 1, 3 and 1, were assembled together and a balance struck it showed some \$86,000 of a credit?

A. About that, yes sir.

Q. So when you speak of the certificate of deposit account being

overdrawn, you don't pretend that you have made footings of all of the items,—I mean of all the parts of the account of Certificate of Deposit, and that it then showed an overdraft?

A. No, I never so testified. Where I testified it was overdrawn I gave the number of the certificate account that was overdrawn.

Q. That is what I am getting at, and I am trying to show the want of significance of that fact, unless we have some way of identifying what certificates belonged to one account and what to the others.

A. They undoubtedly done that by numbers.

Q. There is no numbering on the certificate or the face of the stub that would indicate it?

A. They all bear consecutive numbers, but there is nothing in addition to that. For instance up to a certain time, they would take up to a certain time and they had 24,000 certificates out; they might then open another account and commence with 2000 or whatever they decided on and they might go into this account No. 2.

Q. But you haven't verified that?

A. I couldn't without having the entire batch of paid certificates. Now all the certificates we had here were the certificates that were outstanding at the failure of the bank.

900 Q. So you haven't verified that?

A. No.

Q. What was the date of certificate No. 24452?

A. April 25th, 1891.

Q. Were any certificates paid that day?

A. I haven't examined the books, or if I did for that date, I don't just now remember.

Q. Were two \$50,000 certificates combined in order to make that certificate?

A. No sir.

Q. What was the origin of it then?

A. Because the books show that there was a charge to certificate of deposit account that day of \$100,000. It is charged as one item and one certificate.

Q. Then this,—\$100,000 of this may have been a renewal of that previous certificate,—probably was?

A. No sir, it couldn't have been.

Q. Why couldn't it?

A. Because there was no \$100,000 certificate outstanding at that time as shown by the books of the bank.

Q. Well there were two \$50,000 certificates?

A. Yes sir, but they show paid at an entirely different date from that, many months.

Q. Was there a previous certificate No. 19272?

A. What about it?

Q. Did you find certificate No. 19272 to G. M. Bartlett for \$100,000 in a single item,—do you recall the item?

A. I haven't testified to any such a certificate.

Q. I don't recall that you have Wasn't that a certificate of \$100,-

000 outstanding on this day that was cancelled on this day, the very day that this new certificate of \$100,250 was issued?

901 A. 19272?

Q. That certificate in fact was a certificate for \$100,000?

A. The book showed it to be a certificate for \$5.00, and it was carried into the ledger of the bank at \$5.00.

Q. But there is a notation that that was a certificate of \$100,000.

A. That is true; that was a pencil memorandum.

Q. Have you seen the certificate?

A. No sir.

Q. Have you seen the debit for that certificate?

A. That certificate was paid and was abstracted.

Q. You haven't seen the certificate?

A. No sir.

Q. Have you got the date of payment?

A. I believe I have among some of my records.

Q. Was it paid as \$100,000?

A. I wouldn't want to state Mr. Rose, without looking that up. I think I can look it up and if you want me to I will.

Q. Look it up and see if you can't connect that with this \$100,-

250.

A. I can say positive that it had nothing to do with this transaction.

Q. Now when was that first paid, that certificate of \$100,250.00 No. 24452?

A. The 28th day of April, 1891.

Q. What does the entry on the deposit ledger import on that day?

A. It shows that certificate of deposit for \$100,250 was paid on that date.

Q. No, the deposit register?

A. It would show that certificates was issued that day.

Q. Is there anything in the deposit account to connect the one with the other, on the face of the record itself?

902 A. No sir.

Q. You connect them up by mere inference and deduction?

A. Yes sir, by tracing the transaction.

Q. Now you gave some other things that you thought might account for the discrepancy in those two accounts. What were they?

A. I gave a number of them. I don't know which you refer to.

Q. No, on that particular day you spoke of something.

A. That particular day certificate No. 24470 was issued in the name of C. W. Mosher, treasurer for \$75,000. The prison contract of C. W. Mosher was credited with \$15,000. The personal account of C. W. Mosher was credited with \$10,000.

Q. Well now if \$15,000 had been deposited to the Prison Contract account, it would be entered as a bona fide deposit wouldn't it?

A. Yes, "if."

Q. Now what is there in the items themselves to connect one with the other of those segregated deposits?

A. Just the general appearances and surroundings, and what I have learned in regard to what this prison contract was, and what Mr. Mosher was.

Q. There was a prison contract?

A. There was an account of that kind carried on the books.

Q. Well Mosher, or one of his men was in fact the contractor of the prison labor by a special act of the legislature, up until the bank failed, wasn't he?

A. I think there was a contract of that kind, but my testimony was simply as to the bank books. I know there was something of that kind.

Q. And you have no personal knowledge as to what legitimate credits were placed to that account, or from what sources they came, have you?

903 A. Only what the bank books show.

Q. Well the entry purports to be a bona fide deposit?

A. On its face it might appear to be.

Q. I mean the entry itself. Suppose a man saw that entry he would say "Well that imports that the Prison Contract account made a deposit of \$15,000 that day?"

A. Yes sir, which is a fact, it did.

Q. Now what is the date when you have mentioned an item of \$10,000 credited to R. C. Outcalt, Treasurer?

A. April 30, 1891.

Q. From what fact do you conclude that that had any reference to this certificate of deposit that we are trying to trace out the payment of?

A. From an examination of the books, and the character of the entries, and so forth.

Q. Did you examine the account of R. C. Outcalt, treasurer, to ascertain what it was?

A. I have.

Q. What account was it?

A. R. C. Outcalt, Treasurer?

Q. Treasurer of what institution,—what concern's money went into that?

A. As far as the books themselves show, nothing, but from investigation outside of the books, I am of the opinion that he was treasurer of what is commonly called the Lincoln Gas Company.

Q. And as such had no control of the account, except as mere custodian to receive it there?

A. As far as the books show he had absolute control of the funds, and to pay them out on orders properly drawn against the account.

Q. And who drew the orders? Is there any indication that he had any power to draw orders?

904 A. Oh no, the proper officers of that corporation would draw the orders.

Q. So aside from that, being custodian of the funds and to pay

them out on orders properly drawn, he had no other control of the account?

A. No one else could.

Q. You say that a man who has authority only.—

A. Let us not misunderstand one another. When a man is treasurer and the money is placed in his hands he has absolute control of that money, and is supposed to honestly pay that out when a voucher duly executed is presented to him; he will then draw his check and cancel the voucher, and pay it with his personal check on that account, and that check is charged to his account.

Q. Let us assume in this case that the company of which he was treasurer, drew a check,—and without any check of R. C. Outcalt, that it was paid by the bank and charged to that account; that the company drew the check directly on the bank, then he wouldn't control it would he?

A. Yes sir, every man in a bank controls all the money that is placed there in his name.

Q. Although the bank had the authority to pay it out on his check.

A. Why a thing of that kind would be the next thing to ridiculous, it seems to me,—that a man can deposit money in an open account and still the bank have instructions to not allow him to withdraw a dollar of it.

Q. Suppose the gas company deposited this account there, and deposited it under that cognomen, of R. C. Outcalt, treasurer, and then reserved to its own cashier and its president the authority to sign checks on it; it was known as the gas company's check in which R. C. Outcalt had no personal interest whatever. Would that be a foolish thing?

905 A. Why it would look to me like you are having an officer in name, but in fact he is a dummy: what is he there for if he isn't there to act as treasurer?

Q. I am assuming that he is in fact a dummy and couldn't draw a check against this account, and never did in fact draw a check against it. You call it a dummy. You never saw a situation of that kind?

A. No sir.

Q. Now what significance do you attach to the entry of that deposit that day, April 30, 1891, to what we may concede as the active account of the Lincoln Gas Company, of \$10,000?

A. I consider it a false credit to that account.

Q. Now what are your evidences?

A. The general character of the transaction.

Q. Not general. Give your specific reasons.

A. In the first place the certificate of \$75,000 which was cashed that day I call a fraudulent certificate, because it was a part of the fraudulent certificate of \$100,250.

Q. What connection has that with the deposit of the gas company for \$10,000. They are separate accounts aren't they?

A. Yes, sir.

Q. One enters into the certificate of deposit account, and the other into the individual balances?

A. Yes, sir.

Q. Now how do you connect the one with the other?

A. Just from my knowledge of these transactions, and the way that they check out.

Q. That won't do. What is your specific connection,—you say your general knowledge, and then hide it. That don't help me out. I want to get at your specific reasons.

A. I don't know as I can answer that question satisfactorily to you. I would if I could.

906 Q. Now isn't it true that in order to reconcile and dispose of it you figured in the different accounts of the bank to find items that would counterbalance the withdrawal? Isn't that true?

A. To a certain extent, yes sir.

Q. And you found this \$10,000 item, and another item would counterbalance the amount that the certificate of deposit account seems to indicate was paid out over the counter?

A. Yes sir.

Q. And because those two items were the only counterbalances that would connect in any way the managing officers of the bank with it you thought that might account for it,—that's true?

A. Oh no,—that is true in part.

Q. And you wanted some aggregate amount to reconcile.

A. Not entirely, no.

Q. And you got two items that reconciled to a farthing, didn't you?

A. I think I did.

Q. Well the more items there are the more complicated the reconciliation becomes?

A. Always.

Q. Now you don't pretend to have any personal knowledge as to the bona fides of that credit to the gas company, do you?

A. No, if you mean I saw them made, or anything of that kind.

Q. And so far as you have had access to outside sources,—have you gone over to the books of the gas company and tried to reconcile this particular transaction?

A. No sir, I did not. I made an attempt to, but was told that at the time the institution was transferred to the new institution that no old records went with it.

907 Q. This was after the transfer, and that transfer was the latter part of 1889?

A. I mean the gas company; I inquired of the secretary of the gas company.

Q. You didn't get any information from him that there was any transfer after April, 1901, of the gas company,—between that and the failure of the bank, did you?

A. I asked for these dates and was informed that they had no records as to the cash transactions of the gas company of that date and was told that the records after it went into what they call the

new company—I don't know how many times that has been transferred or anything about that.

Q. Nobody claimed that these books had ever been destroyed or made way with?

A. They said they did not have them. Now I didn't make an examination because they didn't let me into the vaults, and so forth.

Q. Well if you found that a bona fide transaction that would be unimpeached here, of course you would have to change your conclusions?

A. I am always willing to correct a wrong statement.

Q. I wasn't trying to show that your statement was wrong so much as to show that you had to depend upon your judgment in getting at your conclusions.

A. Not alone, no sir. There are facts that will crop out in various ways if you are examining a set of books that will tell you things.

Q. One of the most significant things is to find a collateral source of inquiry outside of the book, that is creditable?

A. Yes sir.

Q. But in this particular book you were unable to run down the collateral inquiry?

908 A. No sir, I wasn't.

Q. You would have run down the collateral inquiry, if you had opportunity to do it?

A. I would, and I did in this instance to my full satisfaction.

Q. What collateral lead did you take in this instance?

A. I have got Mr. Thompson's own statement.

Q. What did Mr. Thompson tell you about it?

A. He didn't tell me anything.

Q. What is his written statement?

A. It is in another case, where he gave the balances of this company on the first day of each month, at the time that R. C. Outcalt was president, and that account clearly shows what is reflected,—

Q. Where is that,—the first day of what month?

A. The first day of May, 1891.

Q. What was the balance on that day?

A. It was in round numbers \$10,000 less than is shown here.

Q. Now I wish you would get me that source, so I can see how you test it out.

A. As I say it was a written statement.

A. You say it is a statement in writing?

A. Yes sir, it is written on a typewriter.

Q. Signed by Mr. Thompson?

A. That statement is not, but his evidence is, which that is a part of.

Q. And from that you conclude that there is something wrong about this item.

A. That was a part of it; that was probably the strongest indication.

Q. That was the next following day, was it?

A. Yes sir, the first day of May, 1891.

909 Q. Now, Mr. Jones, when items enter into the accounts of two different institutions, they pass through one bank and another don't they,—there is a period of transit, even in institutions in the same town, isn't there?

A. From one bank to another?

Q. Well from a bank to its patrons; suppose they sent out notifications of remittances, would there be any difference on the same day in the books of the two institutions? Suppose a bank makes up its mail and its statements and sends its mail out in the evening, the depositor wouldn't get the advice of a transaction until the next following day, would he?

A. That is owing to what the transaction would be now.

Q. Well suppose it is a deposit?

A. If you make a deposit in a bank you certainly get your credit, or its equivalent, at the time you make your deposit.

Q. Suppose you have an item of bonds that is remitted from abroad for the use of one of your depositors, and suppose you have taken the transaction and report it made to the bank, and you enter it on the deposit, and you give a written notification, so that the books of the other concern can be entered up to reconcile with yours, would they be on the same day?

A. I would have to answer that this way. A transaction of that kind they would agree at the value of those bonds, and the bank would accept them the same as they would a draft, and in that case they would give you credit right then and there. The other way they would take the bonds, what I would term for collection, and they would be transmitted to the proper place where payable, and then when the correct amount was ascertained the credit would be given at that time, that might be several days later, but your credit would be of the same date practically that the bank there received its equivalent of cash, or the cash.

910 Q. Well but it might vary a day or two?

A. No, I can't conceive how that is possible. You mean from the time they would take these bonds and send them?

Q. No sir, take your customer's books, the bank books should show the date they received a remittance from abroad?

A. Yes sir.

Q. Then how could you know the other customer's books had the item entered at the same time the bank entered its credit?

A. A collection, it naturally wouldn't; they would notify them, but as far as the bank is concerned, the bank would credit it on the day it would receive it,—the business day.

Q. But would the customer credit it until he received advice from the bank—would he charge it up to the bank as a deposit?

A. The customer has no right to charge anything up to a bank until it has actually made a deposit; if he takes something there for collection, and instructs the bank on the collecting of the item to give him credit and notify him, that is an entirely different transaction.

Q. Then in that case the customer may only properly charge it

up on his books as a deposit in the bank when he gets his advice from the bank that it has been received?

A. If it were possible that this gas company had given the Capital National Bank something to be collected, they might not enter it until the next day, but in a small city like Lincoln it hadn't ought to take more than 24 hours for notification.

Q. But still the period of transit of the advice would make a difference, or may make a difference in the date of entry on the one set of books or the other?

A. A thing of that kind might occur.

911 Q. And it was natural for it to occur, and it does in practice occur?

A. It is the exception rather than the rule.

Q. I thought it was the rule rather than the exception.

A. No sir, the rule you will find is the other way.

Q. In collection matters?

A. It is the custom for the bank to give written advice for every collection sent.

Q. What was the custom in Lincoln in 1891?

A. As I understand it they would credit the proper amount to the proper account; they wouldn't set down and write a letter and say they had done a thing of that kind.

Q. Would they send a postal card and say they had credited the account with so much money?

A. That is the practice between banks, but I never heard of such a practice with individuals.

Q. Isn't it the custom of banks to give written advice by card, "we credit your account" and so on, on a printed form?

A. That might be done.

Q. And isn't it the custom of banks to do it, in towns the size of Lincoln, and was in 1891?

A. No sir, only between banks.

Q. What do you do when a man sends you a deposit by mail,—what do the banks do in that case,—you have no pass book—send it just as a collection. Now how would he get notification when it was received?

A. In all my experience I have never had such an account as that; never had a personal account where the man didn't have a pass book.

Q. Now I have a pass book, but I may be gone away and send something in for collection.

912 A. Then that is credited to your account, and when your pass book comes in at the end of the month, it is made up and that would show on your pass book.

Q. Now what I am getting at was, in addition to that the bank would send its printed card of advice of the items received and credited.

A. I wouldn't say that they don't do that, but I say it is out of the ordinary.

Q. So you have no personal knowledge as to whether or not that was a bona fide credit or not, you only give your inference.

A. I gave the facts as I found them.

Q. And your inference from those facts?

A. Yes, sir.

Q. May I ask you what case Mr. Thompson gave any such testimony in as you refer to so that I may check it back. If you have used it as one of your sources of inquiry I would like to know what it is.

A. I couldn't tell you just what the title of that case was.

Q. What was the nature of the proceeding and where was it?

A. It was a case in the Federal court. I read that—oh, several years ago.

Q. Did you keep a schedule of it?

A. No, I didn't. I made a memorandum from it.

Q. What is your memorandum?

A. Why just referred to this statement which I had read from Mr. Thompson's statement giving the monthly balances.

Q. On the first or the close of the month or when?

A. On the first day of each month.

Q. At the beginning of that day or the close of that day?

A. The statement itself doesn't show; it just states on the first day of each month, unless that had happened to fall on Sunday, and then it would be the following day.

Q. It didn't state whether those balances would be affected by that day's business?

A. No sir, it is a straight statement of those dates.

Q. Now when you say you carry a certificate of deposit through the ledger account, what is there in the ledger account to identify the item with the particular certificate of deposit, as you examined the books of this bank?

A. The amount.

Q. It is not identified in any other way, is it?

A. No, the name nor the number isn't carried to the ledger account.

Q. Now let us take certificate, just for example, No 24806, Cassius Weese (Weiss). Have you found it?

A. Yes sir.

Q. Is that the correct name, Cassius Weese?

A. Yes sir.

Q. That is a certificate, so far as the stub indicates, and so far as the certificate indicates for \$2100?

A. So far as the certificate and the stub is concerned that is correct.

Q. Now when the money is deposited on a certificate of that character, what is the particular account of the bank that *that* would figure in making up its balance,—into which that item would enter?

A. What book?

Q. Yes sir.

A. The first book is the certificate of deposit register.

Q. Are the balances taken into the general accounts from the

certificate of deposit register,—in other words is the certificate of deposit register in fact a book of account?

914 A. It is one of the books of the bank from which the daily business of the bank is made up.

Q. Is it ever balanced or footed,—is it balanced or footed daily?

A. No sir.

Q. Well what is the account into which the item enters so as to affect the cash of the bank in fact,—its daily balance?

A. From the certificate of deposit register it is carried to the ledger; there it enters into the proper account in the ledger, and then the total of that enters into the general totals for that day which appear upon your general balance book.

Q. Then the changes in the general balances of the bank are only such as are noted in the individual deposit ledger?

A. Carried from the ledger,—the balance book is simply a convenient form of ledger, the balances carried to one page in place of having them scattered through the books.

Q. But in order for the item to influence such balances it must enter on the ledger?

A. The ledger is the account; the general balance book is simply a book of convenience only.

Q. Now what did the ledger show that day?

A. The ledger showed \$2100.

Q. What did that ledger entry import, standing alone, by itself?

A. That a certificate of deposit for \$2100 had been issued that day.

Q. That entry agrees with the certificate, doesn't it?

A. It does.

Q. And that entry agrees with the stub?

A. It does.

Q. It is the item that affects the cash balance of the bank isn't it, for that day?

A. Yes sir.

915 Q. And when it was paid and charged against the certificate account on the ledger of the bank, the debit and credit entries on the ledger relating to that particular certificate balanced, didn't they?

A. They did.

A. I notice in many cases you did not give the ledger account in your schedule.

A. I will say for your benefit that where I did not give the ledger account, the ledger account agreed with the amount that the certificate bore.

Q. So that where you didn't give the ledger account the ledger entries respecting that particular certificate,—the debit and credit balanced?

A. Yes sir, otherwise I would have shown it.

Q. And corresponded with the amount shown on the face of the certificate?

A. Yes sir.

A. Now in that particular class of cases by what process do you

figure that the credit of that amount,—the correct amount—in the ledger account and the charging of the correct amount to exactly counterbalance, when the certificate was paid, showed that the bank lost anything?

A. I haven't so testified.

Q. Then to what purpose was the recitation made of those numerous certificates in that class?

A. For the reason, to show how they kept the accounts of the bank.

Q. To show that the register and stub was off sometimes?

A. That a certificate would appear on one book as one amount, and in another book at a different amount, and in some instances the certificate register would show the certificate issued to a different name than the certificate bore. Furthermore, the certificate of deposit register is a book in a bank so that the officers of
916 the bank can ascertain at a glance what certificates of deposit are outstanding at all times, because when a certificate is paid, there is a column in a certificate of deposit register wherein they are supposed to show the date of the payment.

Q. Now it is a fact that where the ledger entries of both debit and credit agree with the face of the certificate, the general account books of the bank would then not be affected?

A. That is correct, there would be no loss.

Q. Not be affected by a mere register; it don't have footings to the accounts?

A. Only to this extent, they cannot get a proper amount to carry to their balance register only as they take it from the certificate of deposit register; that is the key to the amount of certificates issued that day, and the amount of them should agree with the amount on your ledger.

Q. In other words, if the register and stub are erroneous the power to check the actual certificates with the ledger balances is destroyed, isn't it?

A. Yes, sir.

Q. And that is destroyed, even though the ledger balance is correct,—you couldn't check it up.

A. It would show a bad state of accounts in the bank, whenever accounts are placed in such a condition they cannot be checked.

Q. That is what I say, instead of affording an opportunity to check, it destroys the ability to actually check the account.

A. No, in that you are not exactly correct. You destroy the way of checking it easy; you can make the same checking by taking the paid certificates and going through the same process but it is just more work, that's all.

917 Q. But you couldn't strike a balance of the certificate account any day in that case, because the certificates themselves of varying amounts are outstanding and not in the bank.

A. No, you are wrong again. You can strike a balance and show the amount of certificates that are outstanding of a bank any day, by checking up the paid certificates, which are always in the possession of the bank. That is the object of that register.

Q. Suppose those are correct you can check up so far as the certificates have been paid, probably, if you know enough to follow them through the register and through the deposit ledger and see how they are debited and how they are credited, but when a certificate comes in and is charged the ledger account doesn't show the number of that certificate in this bank does it?

A. No sir.

Q. And if two certificates are paid the same day, or if one is paid, the only way you have of identifying it is to figure out from those certificates and identify them by the paid stamp.

A. That is the date to show when they were paid, yes sir, and then you can refer back to their book and check up.

Q. You regard that as a very simple process?

A. Oh yes. Didn't you ever check up your bank pass book when your checks were returned to you?

Q. I have done that of course. Now that is all right, but so far as the outstanding certificates are concerned, how can you check those if there is any variance in the amounts?

A. If your account is properly kept, —

A. I am assuming it is not properly kept. How can you check a certificate that is held in New York, or Cincinnati, or Boston, a certificate of \$50,000, if the register shows \$5,000? Are you not helpless in respect to ascertaining the existing liabilities
918 of the bank, and the certificates of deposit unless the books are kept correctly?

A. In case that you are going to make fraudulent entries of course it would be more difficult, but that would it seems to me put a man on guard quicker than anything on earth. You can take your check again and find out that it is wrong, that it doesn't agree with your ledger balance.

Q. We can admit that the unerring way to check a bookkeeper or teller is to remove him and take possession of all his cash and his items and documents, and then make them check with the book accounts,—that is the infallible test.

A. Yes sir, but it is not necessary to remove him; you can check over the records of a bank, and you can do it in a bank of that size in two evenings, and the man wouldn't know what was going on.

Q. Suppose you have a system like Mr. Alfred —, and have it for years running as high as \$100,000 behind all the time just at the collection desk, and yet never having made a false entry—every item checked—just by keeping the collection of a day and holding them over one day.

A. How large an institution was that?

Q. The First National Bank of New York. Suppose you employ the same system of delayed entries, and then ultimately enter them with religious accuracy you can keep behind depending upon the volume of business, and depending upon the number of days' delay, and you could keep large sums in a large institution out all the time couldn't you? Now how can you expose that where a man has carried paper and items in his pocket,—not left in his desk,—unless

you go in and ask him to produce his items, and separate him from them in some way?

A. Well all I can say,—of course when you refer to the First National Bank of New York,—of course \$100,000 is a very large sum of money, but it is very small in comparison to their 919 day's business, but I will say that there is no bank yet, in the world, where their business has been so big that a good bookkeeper couldn't check it.

Q. Of course, I will agree with you on that. But the final test comes when your cash and everything is counted. Now let us come to the item of discrepancies in the certificate account at the close of the bank. Take the certificates of deposit outstanding at the time of the failure as compared with the books of the bank. Now assuming that there was a record on the books showing outstanding liability for certificates of deposits, just as you have testified, of \$86,265.70. Why do you say that the records and the books only showed that much outstanding when the bank closed?

A. Because that is what the books showed.

Q. They did?

A. Yes, sir.

Q. Well now, assuming that that is the utmost that the books showed,—how could it be ascertained by an examination until the outstanding certificates were called in and laid down side by side and checked with the books that the actual certificates outstanding overran \$431,733.79?

A. In order to check a certificate of deposit account, or any other account, it isn't necessary that they shall all be in and paid before you can check it up.

Q. Well sir, why do you say in your testimony that the books and the account only showed \$86,265.70? Why didn't you say the books and the account showed \$517,999.49, if you could check them out independent of the books?

A. Mr. Rose, you do this,—I said we could sit down and if I had all the old certificates, which the Capital National Bank ever issued, and those paid, I could sit down any date and give you the amount of certificates that should be shown in their ledger 920 account. That is not a difficult task for anybody.

Q. I am talking about your proposition that you have reiterated here over and over again that these variances were obvious. How do you say a variance is obvious and reconcile that with your testimony—positive testimony—that the books only showed eighty six and some odd thousand dollars, while the certificates that were outside of the bank and not open to a check, actually showed over half a million?

A. That is the easiest thing in the world.

Q. All right, let's hear it.

A. Take that package of certificates there that foots up that amount. Now then the amount there or a similar amount, there is the amount that showed here in your ledger account, and I made a deduction that shows the amount of certificates outstanding in

excess of what your ledger account shows. Now if you wish me to I will go in there and bring in that ledger so that you may see it.

Q. I will take your word for that. Then if a director who wasn't in active management of the bank should turn to this deposit ledger and undertake to see what the bank's liability was on certificates of deposit, if he had accepted the integrity of the book he would have found the liability only the eighty-six thousand and some odd dollars at the close of the bank?

A. If he had just looked at the ledger account.

Q. And if there were these great variances in the outstanding certificates,—you reiterated over and over again certificates that showed discrepancies between the stub book and the register and the face of the certificate which came to the receiver and which were outstanding until after the failure of the bank. That is true?

A. Yes, sir.

Q. Now the register and stub book wouldn't show what the bank's liability was, would it?

921 A. Either one should, but in this case neither one did.

Q. Yes sir, they both should, there's no doubt about that.

Mr. THOMAS: Were there not numerous certificates of deposit in the bank cancelled prior to its failure that showed these same variances between the face of the certificate and what the books showed?

A. Yes sir, numerous instances.

Q. Those numbers were not carried onto the ledger, so you could go to the ledger and call for the certificate; you had to get control of all of the certificates themselves, didn't you?

A. No, no. Now Mr. Rose, there are two ways of checking a certificate of deposit account—

Q. Two ways for a bookkeeper.

A. Yes sir—any man of ordinary intelligence. One is by the certificate of deposit register, which is the simplest and easiest way, for it is what that book is for, and the other is by the paid certificates. Just like you would take your bank pass book.

Q. That don't show the liabilities outstanding. The certificates themselves show the discharged liabilities, don't they?

A. Yes, sir.

Q. But here is a bank that had certificates out to one bank or to bankers and others, in Cadiz, Ohio, and in Illinois, and all over this country, of over half a million dollars, that were actually out. Now how are you going to ascertain what those liabilities are, assuming that the records are falsified so as to indicate a mere nominal liability on large certificates; now how are you going to figure that out from the register?

A. May I answer it by illustration?

A. Yes sir, answer it any way at all that is satisfactory to you.

922 A. All right. Now then we will take your bank account; you have a pass book, and during the month you know that you have deposited \$1,000; that is the amount of your deposit during the month; you know that you had issued \$750 worth of checks, and at the end of the month your pass book is balanced,

You look at the checks and look at your account and check it up and find that there has only been \$500 worth of checks paid. You know by a mere calculation that there is \$250 worth of them that are out and unpaid. Now then you will find in regard to your certificate of deposit account, the same thing—just as simple as that; it is the same process; checking the paid certificates back against those issued, and your difference between the two is what your ledger account should show.

Q. But the book item in this case was the unknown item—the certificates out all over the country.

A. That is true, but a mere glance at that book without any figuring of any kind would show that that account was not properly kept.

Q. And would it show that the liabilities of the bank were on that account?

A. No sir. I want to state this to—. You may take your certificate of deposit stubs, your certificate of deposit register and your ledger and I will venture to say that for the past seven years they never agreed on a single day.

Q. How were they carried on the general ledger of the bank; were they carried into the balance ledger?

A. No, they're carried under the head of certificate of deposit accounts.

Q. Is there separate accounts, the certificate of deposits in the general balance book?

A. Oh, no. In the general balance book it is a part of the total deposits.

Q. And carried there every day?

A. Yes sir.

Q. Is this book balanced every day?

923 A. Should have been balanced every day; it shows a balance, but they're not always true balances.

Q. The books are worked on every day?

A. Yes, sir.

Q. The most active book in the bank?

Q. No.

Q. The book that requires probably the most work on?

A. No, the general balance book is simply the accounts—

Q. No, I mean the individual deposit account.

A. Well there are more entries made in that than any other book.

Q. And in a way it is the most complicated book—it consists of three current books?

A. No, there are two of the individual deposits. Numbers 1 and 2, and then there is one of the country banks.

Q. That makes three daily balance books?

A. Yes sir, and then the general balance book, if you would call that one, and that would make four.

Q. Now if you will you may put the balance book before you while I question you about your schedule on that.

(Witness complies.)

Q. Can you tell me now what sum, if any, that report overstates the resources, in the aggregate, of the Capital National Bank, as compared with the exhibit of the resources contained in the balance book for the day ending December 28th, 1886?

A. My answer to that is, these early reports I didn't go into because the amounts in the earliest reports are small, but as the bank grew in years, and the volume of business increased when there was a large difference then I commenced showing it.

Q. Now you showed a mere variance in the loans and discounts over what item in the balance book—what is the ledger account?

924 A. It is marked here B. R. Bills Receivable.

Q. But in the report it is mentioned as discounts?

A. Yes sir, it means the same thing.

Q. Now did you know of the bank loaning, or advancing to Walsh and Putnam, who owned the building that they occupied a sum of several thousand dollars to encourage the building of a suitable home for them? Did you know of that transaction?

A. I did.

Q. Was the item properly charged on the ledger account against Walsh & Putnam for that loan or advancement?

A. I consider not. The bills receivable doesn't show any loans of that kind.

Q. I didn't say bills receivable, I said the ledger account. Was that amount, advanced in that manner, and for that purpose, properly charged to Walsh and Putnam, to be paid by credits or monthly rents as they should accrue in the future and ultimately wiped out in that way?

A. I know that there was a contract of record similar to what you speak of.

Q. Well wouldn't that item be a resource of the bank in some form?

A. Yes sir, if it was properly carried.

Q. It would be a resource of the bank, would it?

A. In one sense of the word, yes sir.

Q. It would not be an overdraft would it, if it had been loaned or advanced in that manner?

A. No, it is not an overdraft.

Q. Would it be a loan,—not a bills receivable,—but would it be a loan, done under an agreement by which it was loaned in that manner?

A. All loans I consider bills receivable.

Q. Well they are not all bills receivable. You may have an agree-
925 ment to loan a man on his check, keeping his check and charge it to him and it may be a loan.

A. Oftentimes banks carry time certificates of deposit as bills receivable,—anything that bears interest.

Q. Well now that would be a good asset, wouldn't it, under those circumstances?

A. That I wouldn't be prepared to answer.

Q. They would get the benefit of that in the saving of their monthly rental from time to time as they occupied the building.

A. In saving their rents?

Q. Well they would get paid that way instead of paying out the cash, they would credit the ledger debt of Walsh and Putnam, wouldn't they?

A. It would amount to that, yes sir.

Q. Well now assuming it to be a good asset and for money loaned, and there being no balance book entry under the specific title loans, why wouldn't it be both conscionable, honest and correct to add the unpaid balance in that account of Walsh and Putnam to the loans? Is there anything wrong about that?

A. No sir, that might be done and done properly.

Q. Now then suppose you take in this ledger balance, the Walsh and Putnam item as entered there and add that to the bills receivable account and see whether or not the total equals the item of loans and discounts in the published report?

A. Yes, sir.

Q. Then are you prepared to state that when the accounts are reconciled and adjusted in the manner that I have suggested that the loans and discounts are stated larger than the balance book would warrant, considering those two accounts in the balance book?

926 A. I made up the report according to the books of the bank: I didn't try to get amounts and throw them together that would equal a certain amount and one reason why I didn't use this item of Walsh & Putnam,—well in this instance if you will add it in there it brings the amounts to about equal; you will notice in their statements where they use that in various ways. At one time it is added as bills receivable, at another time that is added as due from banks as a cash item, and I made up my mind that an account that was twisted around and used in various ways the way that is, is not properly a bills receivable.

Q. It should reflect that item of the bank's resources somewhere in the report shouldn't it?

A. If properly kept that is true, but the books of the bank will not show that that account was properly kept for this reason—

A. Never mind that now. The only inquiry I am making now is just on your own statement of the variations of the report from the balance carried in the balance book. That as I understood was the basis of schedule "YY".

A. Yes, sir.

Q. Now confine yourself to that, and see whether there is a discrepancy shown on the face of the books, as the balance book entries appear here. Of course the Walsh & Putnam account should be reflected somewhere in the official statement, should it not?

A. Yes, sir.

Q. Now when your attention is called to it, where, if any place, do you think it is reflected in the official statement?

A. I couldn't answer because that account is used in so many different ways, and when the account is finally terminated in accordance with the agreement on record they still carry that account.

927 A. (continued). That of itself shows that it is a very peculiar account; one day it is real estate and one day it is cash.

Q. When you went to search for and develop discrepancies you undertook to foot the items and bring them together so that they would reconcile with some total, didn't you,—like in the certificates of deposit?

A. Yes sir,—I took the items under the proper headings.

Q. Now you took items in one account and laid them side by side with items in another account. Now why isn't that method applicable here in ascertaining whether this report in fact overstates the resources of the bank, beyond what they are in fact as is shown by the Balance book; how can you tell them unless you take into account every item on this ledger?

A. Well sir, when I go to a Balance book to look for cash I look under cash, I wouldn't look under Bills Receivable.

Q. Is that an answer to my question?

A. Yes, sir.

Q. What does that reference to cash have to do with this report. Did you find in the item of cash in this bank, any variance?

A. Oh yes, in some statements.

Q. Not in this report I am talking about.

A. No, as I stated,—this first report is in the early history of the bank and the discrepancies are not as large as they are later.

Q. You haven't tested out to see whether this report, when all the ledger accounts in it are reflected by the specific titles prescribed by the Comptroller,—whether it will reconcile in the amounts of resources and liabilities or not, with the published report, have you?

928 A. I compared it with the published report and what the books of the bank showed on that day, and I took the accounts under their proper headings, as they kept them. I take it for granted in making the comparison that the books are properly kept.

Q. Listen to the question. The reporter will read the question. (Question repeated.)

A. That is the first question he asked me in regard to this and I told him that in regard to this report that I haven't made an investigation as to that point.

Q. Now if I suggested the items as I did in the Walsh and Putnam case,—I wish you would look it over on the whole and be prepared to state whether the resources equal the liabilities. Now take the item of overdrafts. Is that the next item,—you have noted a discrepancy in that item have you?

A. Yes, sir.

Q. Are overdrafts a resource?

A. Some overdrafts are.

Q. Is it a resource or liability; which would it be classed as?

A. If it is a good one it is a resource, and if it is a bad one, why it's a bad debt.

Q. Well is it a resource or a liability,—the man owes the bank, the bank don't owe him does it?

— No sir,—he owes the bank.

Q. Did you find a ledger account there,—due from E. Hurlbut Jr.?

A. Yes, sir.

Q. Did you find a ledger account there due from Marsh?

A. Yes, sir.

Q. Did you find a ledger account there of Bills of Exchange?

A. Yes, sir.

929 Q. Are those all resources?

A. I could say no. E. Hurlbut, Jr., was never worth a dollar in the world; Marsh was.

Q. You are testifying as to discrepancies between these reports and the balance book. Now you stay by that proposition.

A. All right.

Q. Now assuming that they are what the balance book shows on its face,—never mind anything else—just the face of the balance book, then they would be resources wouldn't they,—because there would be something due the bank.

A. That's what the book shows.

Q. Now where are they reflected in that report?

A. They're not in the report under the head as disclosed by the books of the bank.

Q. And yet they should be reflected under some head in the report?

Q. Yes, sir; I could have gone into detail and showed that the published statement did not show all three of those items which you mentioned, and they should have showed in the published statement, but they didn't do it unless they done it under some other head.

Q. Do those show as a resource anywhere in there,—as such?

A. Yes sir, they're listed so.

Q. No, but in the published report.

A. No sir.

Q. Now are those balanced off with any other item, or liability?

A. I don't know sir,—the published statement doesn't disclose.

Q. What does the ledger show as due from National banks, or is there any account of that?

A. No, that is the total of these various accounts.

930 Q. Now the overdrafts then were only partly shown in the official statement?

A. That's all.

Q. So that the official statement omitted then to list as such \$7,691.54 of that particular class of resources?

A. Yes sir.

Q. And yet that omitted item should appear somewhere as resources of the bank?

A. It should appear under no other head than overdrafts.

Q. Now are the items to which I have referred, of due from Hurlbut, Jr., due from Marsh, \$7,691.54 of overdrafts not reported as such, and the Bills of Exchange, \$25,485.45 reflected in the published report, as such?

A. They are not.

Q. When they are added to the amount due from banks, does that make up the discrepancy, \$34,339.47?

A. I don't know, Mr. Rose. That is not due from banks.

Q. No, no. I am just figuring whether it accounts for the discrepancy, as to whether it should not appear somewhere in the account,—can you say that?

A. No sir, I can't take the amounts due from Marsh and Hurlbut and put it as due from banks.

Q. On the face of this report, are those items reflected anywhere in the report of the items of assets, except as the one item "Due from Banks" is increased?

A. I can't say. I can say this, that the published report doesn't,—

Q. Never mind that now.

Mr. THOMAS: I insist on the answers as the witness gives them.

Mr. ROSE: I have a right to a responsive examination, and to direct the scope of his answers.

A. (continued).—doesn't show any such items.

931 Q. Do they show anything that the balances of those particular resources, listed as such in the balance book, are reflected by the report anywhere?

A. They're not under that head.

Q. Are they under any head shown to reconcile with the total balances?

A. I am unable to state what they done with those particular items. Had they done the proper thing they would appear in the published statement, the same as they did on their bank books.

Q. Now I wish you would tell me what the total footings of all the resources would be if the balance book accounts, changed by the entries of overdrafts, entered into it?

A. Do you want me to read off the amounts?

Q. What should the total footings have been to reflect the total resources as shown by the balance book. I don't want you to read them off unless the alterations in the account of deposits, in the form of this ledger, to make it conform to the Comptroller's report doesn't affect it; if that does affect it I want you to make the change accordingly.

A. If I answer your question I will answer it at what the book shows; not at any statement that I would make up.

Q. Are you not willing to check that out and show that the total resources are the same and would balance? You would do that in fairness, wouldn't you?

A. I will say this,—that the books show that they do balance; there's no contradiction over that; the books show that they balance.

Q. The books show that the resources balance with the resources in the reports?

A. The first question you asked me in regard to this particular report I didn't figure out because I could see at a glance that these early statements there wasn't as much discrepancy in as
932 there was later on.

Q. How did it come that the whys and wherefores of these

did not excite your suspicion like they did in the certificate of deposits?

Q. You know about the snowball rolling down hill, the farther it goes the bigger it gets.

Q. In one case it seemed to your interest to figure out reconciliations, and in the other case it seemed to the interest of your concern to avoid a reconciliation?

A. That is not true, Mr. Rose. You can't check a single statement where I gave you the figures—unless it is an error in stating the figures—but what the books and published statements will bear me out.

Q. I don't mean to insinuate that and I didn't state that. I notice that in cases where you want to give a different import to the transaction than that shown by the book entry, when you would figure out and show variations, you employed a method of reconciliation of accounts to get totals in different places, where the evidence by that course of reasoning might seem ultimately to tend to the interests of the plaintiffs in this suit. Now I have tried to point out to you that the same process of reconciliation will reconcile these balances in the daily balance books with the published report, and that the reconciliation in that case tends against the interest of the plaintiffs in this case. Now I have asked you if the fact that the interests of the plaintiffs in one case suggested that you pursue the inquiry to its ultimate end, and your interest in the other case suggested that you forego the inquiry, doesn't explain the fact that you tried the process of reconciliation in one case and didn't try it in the other?

A. No, sir, that is not correct, and, let me say further——

Q. Then in that case why didn't you undertake to figure it out. I should think your curiosity would lead you to try to re-cast the whole ledger account, to see if these items are not listed under 933 any specific head in the ledger, or in the body of the report or in the balances in someway, and just see how you would come out by following out the process of Mosher or whoever made this report. Did you ever try to do that?

A. I did just for my own amusement; by a line of elimination I can get exactly the same figures they have in here, but they are not true.

Q. Nobody disputes that they're not the same identical arrangement.

A. Cash is cash, and now if you are going to find out what the cash is, you couldn't take other accounts and call them cash, when the books show they're not cash.

Q. Did you take into account the significance of letters as to the reports tending to show a more favorable condition of the bank than the balance book itself, as a whole?

A. I don't think so. I will say this that from the letters that were written from the Comptroller of the Currency calling the attention of the directors to their false reports to the department it is more specific than I have made in any of mine.

Q. Now I have never seen any of those letters; they haven't been offered in evidence, and this is purely voluntary.

A. Yes, sir, they have been,—in regard to the overdrafts.

Q. Why do you dodge the proposition?

A. I don't, you try to make me say something—

Q. I just asked you if you understood that that was the materiality of this inquiry to show that the published report reflected a stronger condition of the bank than its own balance book did; did you assume that that was the pith of this inquiry?

Mr. THOMAS: That is objected to as not proper cross examination.

A. I have shown there where the published reports don't agree with the bank's books, and I have taken the accounts as they appear in the book under the proper heading.

Q. And that is the best you can say?

934 A. Yes, sir, that's all any truthful man would say.

Q. And you haven't tried to figure out whether the published reports as a whole reflected a better apparent condition of the bank than the general balance books, or whether they inflated the resources or liabilities?

A. In every instance those published reports show a better condition of the bank than the bank books show. Had this bank published a true statement of the bank's condition as reflected by its books, it would have been closed up long before, from its customers withdrawing their money.

Q. Where were the assets inflated in the report?

A. If you will take my statement you will find where it is inflated to a very large amount.

Q. Yes, but your statement eliminates assets that you don't bring into the statement at all.

A. I don't think so at all.

(Night adjournment.)

(Feb. 8th, 1911—1:30 p. m.)

Q. Now in giving the discrepancies between the report and balance sheet you have an item of \$7,691.54 on account of overdrafts. As a matter of fact that item of overdrafts doesn't appear in the balance book at all, does it?

A. It does.

Q. As such, in the general balance book?

A. It does not.

Q. But you were making your comparison with the general balance book.

A. A statement is made up from the books of the bank; sometimes some banks keep it all in one book, other banks use different forms.

935 Q. Yes, but in this specific case. Here first we have introduced that column of this day's business in the general balance book, and have introduced the reports, and as an expert, as I understand it you have explained the discrepancies between the one and the other, but in the matter of overdrafts you had to have

recourse to entries other than those in the general balance books, didn't you?

A. They were taken from the balance books proper.

Q. From the individual deposit book balances?

A. Well I will tell you, now let's call it the same name that they had in that bank,—the individual deposit ledger.

Q. Yes, sir,—and as a matter of fact that is a ledger?

A. Certainly, it is a combination ledger.

Q. But overdrafts—the total of the overdrafts is not carried from the deposit ledger to the general balance book?

A. Not in this bank.

Q. And the total of the deposits is not carried from the deposit ledger in this bank to the general balance book?

A. They are, in every instance which I had reason to examine.

Q. The exact totals?

A. Yes, sir, except——

Q. Didn't I understand you to say that the deposit ledger totals was reduced by the amount of overdrafts, and the difference was the item carried to the general balance book?

A. I never made any such a statement as that, no such a question was asked me while I have been on the stand.

Q. Well what is the fact as to whether the account carried on the general balance book is the difference between the overdrafts and the total of the deposits?

A. It is not.

936 Q. Are you sure about that?

A. That is my understanding, and what I arrived at from my examination of the books.

Q. Are the deposit ledger here for the date of this report?

A. I suppose so.

Q. Let's get the deposit ledger for December 28th, 1886, and this same general balance book. Unless the amount of the overdrafts were deducted when the combined item was carried over how would the books maintain their balance?

A. That would have nothing to do with the balance whatever.

Q. Now you find December 28th, and find what the balance in the deposit account is for December 28th.

A. These books have the date December 28th, on several pages, but in this book it is all under the——

Q. I want the total of the deposits at the close of business under date of December 28th, 1888.

A. This would be the proper book to get that from.

Q. No, I want the ledger account from which this balance is taken, can you find that?

A. There is no such account kept in the Capital National Bank as that.

Q. Well you may refer to the deposit ledger and find the total deposits at the close of business December 28th.

A. The individual deposit ledger will not disclose that, therefore I cannot turn to it.

Q. How do you say again that the deposit account was carried to the general balance book?

A. I can answer that. The only book of the bank where you will find the amount of the deposits for any day of the year is in the book known as the general balance book. That amount is made up from the totals of the deposits as they appear in two individual balance books, and also the total of the deposits of the country banks.

937 Q. Now you may figure out what those are,—you say it is done with those totals,—those are what you said you preferred to call the deposit ledgers.

A. Yes, sir.

Q. Now a moment ago you said those totals were the basis of the entry under deposits in the general balance book, did you now?

A. The totals which I refer to,—the sum of those totals, after they are footed on a slip of paper, or however they arrive at the knowledge, is carried and put in this book, and this is the only book in the Capital National Bank which will show that.

Q. Very well, that process is plain, I understand that. Now I will ask you if on the contrary from those totals there wasn't first deducted the amount of overdrafts, and the difference between the sum of those totals, and the sum of the overdrafts wasn't the item that was carried to the general balance book?

A. If that's true, produce the books.

Q. You being the accountant, and having under consideration this particular report, I asked you to ascertain for me the total of the deposits at the close of business on July 28th, 1886. That's why I asked you to get the balance book so we could check it right here and ascertain for ourselves. May we do that?

A. If you want me to go to work and make up that day's business, I will, but I think when I give you, as I have given you the figures that that is all you would require of me. If I have made an error in my footings, or something of that kind, that is very easy for you to point out.

Q. No, that is not the purpose at all, of this. You have said that this result was arrived at by a certain process from the deposit account footing and the general balance book. Now of course, 938 personally, I think you are in error, but of course I know it is an honest error, and I just wanted you to check it over and see if you wouldn't personally correct it, that is all, and see if it didn't represent the difference between the totals of the deposits and the totals of the overdrafts.

A. Let me ask you a question; if you done as you say and you find the figures different than the books of the bank,—

Q. I refuse to be an accountant here. Do you see what I mean?

A. Yes, sir.

Q. Now then there's another account you said you didn't understand. The overdrafts are kept in red ink on the deposit ledger, are they?

A. On these books?

Q. Yes, sir.

A. Yes, sir, every one which I have examined.

Q. Now the overdrafts represent a resource, and the desopits a liability of the bank. That's correct is it?

A. Yes, sir, in some instances.

Q. And the overdrafts are not carried as such on the general balance book?

A. In some instances they are; the day that you have before you they are not.

Q. Is there on the page on which this day's totals are entered on the general balance book any account under the specific heading of overdrafts?

A. There is not.

Q. Does the general balance book carry any account under the head of overdrafts?

A. In some instances it does.

Q. Bank overdrafts, or what class of overdrafts?

A. Overdrafts including the bank overdrafts and personal overdrafts.

939 Q. Well does the balance book carry a general account of all the overdrafts of the bank brought together in one column and as a separate item of the general balance book?

A. In some instances the books of this bank do and in some instances not.

Q. But of the date that represents there is no entry in the general balance books?

A. No, sir.

Q. No suppose the overdrafts is omitted in transferring the totals of the deposit ledger,—

A. Yes, sir.

Q. And at the same time the deposits themselves are carried over at their full total,—liabilities are expressed at their full amount, and the resources are diminished by the amount of the overdrafts. wouldn't that throw the general balance book out of balance?

A. It certainly would.

Q. Then as a matter of fact when the transfer is made and these two items of overdrafts and deposits are combined in one item, called the deposit account in the general balance ledger, isn't the item carried over the difference between the totals of the deposits and the totals of the overdrafts, so that each side of the accounts will be affected alike by the elimination of the overdrafts?

A. I think not.

Q. How would their books be kept in balance then?

A. If you will add the amount of your overdrafts, as you suggest, to your deposits in making up your total deposit, your books will be out of balance to the exact amount which you add to that side of your account. In order for your books to balance, if you are going to add any amount to one side you must add an equal amount to the other, if you wish your books to balance.

940 Q. That was my proposition all the time. But if you subtract a smaller resource from the total of a larger liability you are affected each side of the account alike.

A. That would be the same way; if you deduct an amount from one side of your account, for your account to balance, you must make the same deduction from the other.

Q. Isn't that result accomplished in this case by just the process I mention?

A. I haven't found it so in this case.

Q. Have you investigated it to see?

A. I have.

Q. Well now you test it out and see.

(Witness complies.)

Q. Give me the overdrafts and deposits.

A. On what date?

Q. December 28th—the balance in December 28th,—it would be in this book.

A. Let me understand you again,—you say the 28th?

Q. The 28th, yes sir.

A. Now then the 28th isn't the day from which the bank made up their published statement, neither is it the day I have testified to.

Q. Well take it arbitrarily the 28th and it will check out that way.

A. It will not, Mr. Rose.

Q. Well then take it for both days.

A. Here is the 28th.

Q. Now on this particular day, checking over the accounts indicates that the method I have suggested of subtracting the overdrafts from the deposits gets the result that is carried to the general balance book?

A. The difference between the sums of the other books, less the overdrafts on this day indicates the amount as shown by the
941 General Balance book.

Q. It also indicates that the ledger balances at the close of business on December 28th, were carried forward into the General Balance book as of the date of December 29th; that is the general balance book is one day ahead of the others.

A. At the close of business when they balance up on the 28th, that would appear at the opening of the next day.

Q. Now Mr. Jones, if the report had embodied for the item of deposits the item shown in the balance book of \$580,074.05 it would have shown that item of liabilities smaller than the bank actually had outstanding by just the amount of the overdrafts, wouldn't it?

A. I would have to state that like I did before; whatever amount you add to or take from your debit or credit, if you want a balance, that same amount must be added to or taken from the other side.

Q. So that to correctly exhibit the liabilities of the bank it was necessary to add to the deposit account carried in the general balance book for this day \$11,665.87?

A. No sir, it wasn't.

Q. We have just indicated the total footings of deposits and found they were \$11,665.87 larger than shown on the balance book, isn't that true?

A. Yes and no. I will say this, and I don't know how I can answer it any plainer. If you wish your books to balance, when you add to or take from either side of your account, you must do the same on the other side. Now this might be technical. The amount of money that they have got in their bank subject to check would be in the judgment of many, the amount of their deposits. Now while they may have some accounts there that are overdrawn, that certainly in one sense of the word is not a deposit, is it?

942 Q. No, I think we agree that an overdrawn account is an asset and not a liability.

A. And now when you add the amount of the account that is overdrawn to the amount of the accounts which have something there to draw on,—I say it is just whichever way you might look at it.

Q. But you of course understand that the classifications in the report are made up by the Comptroller of the Currency?

A. Yes, sir.

Q. And they require the full resources to be shown and the full liability to be shown?

A. They do.

Q. So that to formulate a report to comply with the requirements of the Comptroller, the balances in the item of deposit account as shown in the general balance book could not be used, could it, the way it was kept in this bank?

A. No, it is not necessary that that report be made up from the general balance book, Mr. Rose, at all. Some banks make it direct from the ledger.

Q. Yes, but you were comparing it with the balance book, and I just wanted to see what the significance of the discrepancies which you discovered was. Then deducting the overdrafts from the total of the deposits would equally decrease the assets and liabilities wouldn't it,—call it the colorable assets and liabilities.

A. Yes, sir.

Q. So it would not be a falsification to add to the balance book entry the amount of the overdrafts which was deducted from the deposit ledger balance?

A. Not if it was properly done, no sir; neither have I testified on that point.

943 Q. But the item of overdrafts is there, and the item of overdrafts is, at least a colorable resource, for the whole sum of the overdrafts.

A. Yes, sir.

Q. And it is proper that the report to the Comptroller reflect it as such in some form?

A. In the form of an overdraft only.

Q. What are the balances shown? You have examined that report,—it is here. What are the total footings shown in the published report. I don't believe you gave that.

(Not answered.)

Q. Now, Mr. Jones, you mentioned, I think, in some instances

where the register of certificates had a paid entry just written in the register, while the certificate itself was outstanding.

A. Yes, sir.

Q. Some fifteen thousand, or nearly sixteen thousand dollars of entries of that character.

A. Yes sir; I don't remember the amount but that would be my memory.

Q. How would that mark affect the cash, the actual cash in the bank, unless there was some corresponding entry in the ledger?

A. When a certificate is paid the first entry is made on the ledger at the close of the day's business,—the certificates are then shown paid on the certificate register. It should reflect the same as the ledger account.

Q. Well in the case of these fifteen thousand dollars of certificates, did you have any identifying entry in the ledger?

A. Those certificates referred to were certificates outstanding, but marked paid on the certificate of deposit register—outstanding
944 ing at the close of the bank on which receiver's certificates had been issued.

Q. Well what I am getting at,—standing alone, what significance does the entry in the register have—that is not a book of account that affects the cash balance of the bank is it, in itself?

A. Just as much as any other book in the bank; they all have their places and perform their part; when certificates are issued the amount that goes into the day's business, they get it only from this book.

Q. Now in the case of the certificates, numerous certificates where you found the register varied from the ledger, and varied from the face of the certificate. You freely admitted yesterday that the cash in the bank was not affected by an erroneous sum written in the ledger or on the stub.

A. That's true.

Q. Now then that same principle will apply here, if a certificate is marked paid, but is not charged in the ledger account as paid, then the fact that it is outstanding wouldn't affect the cash of the bank, would it?

A. Just the same as if a check had been presented and used in place of a certificate,—or bills receivable, and of course if you make a wrong entry on any of the books, and that entry itself will not add or take anything away from your cash, but it will reflect and show that your books are not in accordance with the facts.

Q. Yes, in so far as that mere register is concerned,—in so far as that purports to give a separate history, apart from the real books of the bank, and account for the cash, why it would be an error. I wouldn't contest that. But suppose the payment was not carried into the ledger as a matter of fact, nor credited to cash, or charged to certificates of deposit, then the erroneous entry on the register wouldn't affect the actual cash in the bank, would it?
945

A. Oh, no.

Q. That's what I am getting at. Did you go through the

record book giving the proceedings of the stockholders and board of directors in order to ascertain the amounts of the several dividends declared?

A. I did.

Q. Do the record books of the bank purport to show that these dividends were paid out of the capital stock or out of the net earnings of the bank?

A. They varied in their wording. Some of those resolutions just declared in this form:—that on a certain day a six per cent dividend shall be declared. Others say that out of the profits of the bank as reported shall be so much declared.

Q. Is there any resolution that declares a dividend that does not also run at least a couple thousand dollars to surplus?

A. I wouldn't like to testify from memory as to that. I know that some of them did order a certain amount carried to surplus.

Q. Ordinarily does the resolution declaring a dividend recite the net earnings?

A. As a rule I think not, but it is in both forms.

Q. You say it is in both forms,—what do you mean by that?

A. One form it will state the amount of net undivided profits, and this: I move that a dividend of a certain per cent be declared, and if my memory serves me correct in some instances without any reference to any amount.

Q. Can you specify any entry in the record where the minutes themselves did not purport to show a report by the officers of the bank of net earnings sufficient to pay the dividend?

A. I think I can, yes sir. Shall I get the book?

Q. You perhaps don't need to stop now.

946 Mr. THOMAS: I can give you one in short order.

Mr. ROSE: Refer to it.

Mr. THOMAS: July 13th, 1886, and another on January, 1887.

A. There's a meeting in July 1885 on motion of Mr. Holmes a dividend of six and a half per cent was declared, one per cent run to surplus and the balance to remain in the undivided profit account. I am just reading the motion as it appears in the book.

Q. So there was nothing on the face of that record to indicate that the dividend was declared out of the capital, was there?

A. They wouldn't be fools enough to put a thing of that kind in there, no. There is nothing there to show that they made single false entry either.

Q. There is at least an inference in there that one per cent is run to surplus, and still leaving a balance of earnings to remain in the undivided profit account, and it is signed by C. W. Mosher, president?

A. I read the record to you.

Q. That is the import you get from it?

A. I think that is correct, Mr. Rose, as you stated it.

Q. And every resolution of the record showing payments of dividends purport to have been declared out of the net earnings of the bank. That is the purport of every entry, fairly interpreted?

A. All I could say—I would have to read the motion as passed and I would think it meant just what the resolution stated.

Q. Now one of the entries in the record book that you examined was the entry of January 1889, of the Director's meeting?

A. Yes, sir.

947 Q. Did that entry purport to show what the net earnings were for the six months?

A. That one does. The earnings of the bank for the last six months showing net earnings of \$20,572.74, undivided profits \$305.12, total \$20,877.86.

Q. And on that date did you find a report also of the discount committee apparently, finding the paper of the bank satisfactory, right in the records of the bank?

A. Shall I read it?

Q. Well do you find that there?

A. If you would call that a report; I don't know whether it is a report.

Q. Yes, I would like to have you read it into the record.

A. As per instructions of the Board of Directors, we have examined the paper of the Capital National Bank and find the same satisfactory.

Q. Signed by whom?

A. W. W. Holmes and A. P. Stuart.

Mr. THOMAS: What is the date of it?

A. January 20th, 1889.

Q. Did you find any ledger account of the notes of the Western Manufacturing Company, giving the separate balances at any day of the amount that concern owed the bank on any specific day?

A. You mean in the Capital National Bank books?

Q. Yes, sir.

A. No, sir, they kept no ledger account of any of their notes, as far as I have been able to discover; they all appeared in one account.

Q. Now you spoke of certificates of deposit outstanding on which receivers' certificates were allowed. How did you ascertain the allowance of receivers' certificates?

A. I examined the books of the receiver.

948 Q. Do you have those books here?

A. I have not.

Q. You haven't had them here at any time subject to our inspection?

A. Not at this trial.

Q. That is all I am asking about.

A. Well they were at the prior trial.

Q. Now did you find any period of time when the general balance book of this bank was out of balance?

A. Yes, sir.

Q. When was that?

A. In the large amount of practically \$100,000.

Q. Turn to the general balance book that shows that. Now I said the general balance book of this bank.

A. Are you technical in your question there?

Q. No sir, I refer to a specific book. I didn't know whether you understood my question, that was all.

A. The general balance book in itself would not show that the books were out of balance \$100,000.

Q. Now that is what I asked you. If at any time the general balance books, of which the one before us here, Exhibit No. X-19 is one of the series, are out of balance.

A. No sir, it doesn't show the irregularity, or the books being out of balance \$100,000, which they actually were.

Q. It would have been sufficient and just as effective if you had answered whether you found them out of balance or not. That is what I asked you.

A. Then put your question that way.

Q. What I want to have answered by you is whether you found the general balance book out of balance.—You say you did not?

A. No sir.

949 Q. And the general balance book did not reflect the error in footing of the deposit ledger from December 4th, 1889 to December 24th—or about there.—in 1892?

A. No sir, the general balance book doesn't show the discrepancy in the books of \$100,000.

Q. But the item of footings as actually carried to the general balance book was an item that preserved the balances in that book?

A. In that book, yes sir, but not of the general balances of the bank.

Q. I understand that, but I was only asking you about the one book. Then it would appear, I suppose, that if the error was purposely made that it was made for the purpose of carrying over a footing into the general balance book that would in a measure conceal it if anyone went to the general balance book?

A. I am unable to state what was in that man's mind,—the man's mind that was doing that.

Q. But if a man should run his eye over the general balance book to see the condition of the bank, the book that brought together in a summarized form, or purported to bring together in a summarized form all of the ledger balances, would show on its face, falsely perhaps, that the accounts of the bank balanced?

A. Yes, sir.

Q. Was the general balance book of this bank in balance at the close of the bank in January, 1893?

A. The general balance book has been in balance every day that I have taken occasion to examine it, I think, with the exception of a few cents, or something like that.

Q. You testified in behalf of the plaintiffs in these same cases in May or June, 1902, in this same court, did you not?

A. I did.

950 Q. At that time you stated the length of time and the effort you had spent over these bank books to-, didn't you?

A. I don't remember as that question was asked me.

Q. You stated that you had spent about six months, all told, on the books at that time, and it is a fact that you had?

A. Whatever I stated I think would be true.

Q. Since you don't recall it,—it would be about six months from first to last, wouldn't it?

A. I wouldn't be surprised.

Q. And you had done some very strenuous work.

A. I would so consider it,—others might not.

Q. Now at that trial you had examined to see what apparent losses you could show traceable to the bank of Marsh Brothers and Mosher, and the Marsh National Bank up to the time the name of the bank was changed to the Capital National Bank, and its capital stock increased, didn't you?

A. I don't remember; I haven't read that testimony in a long time.

Q. Isn't it a fact that when you testified as a witness in these same cases in 1902 you testified that the losses you had found to have been incurred up to the increase of the capital stock and the change of name to the Capital National Bank was \$68,174.70?

A. I wouldn't want to attempt to state from memory what I did testify to years ago, but I will say this that I don't think I testified at that trial, or at this trial the entire losses that either one of these banks sustained; I tried to be fair and state that in my opinion I had found losses of a certain amount.

Q. You are not quite so conservative at this trial as you were on the former trial. You testify to losses of \$119,000 at this trial when as to the same item you testified as \$68,000 before.

951 A. I am willing to leave it to the record on that, and I want to say further to the Court. When these cases were tried before I was taken sick after about the third day of the trial, and I was not only confined to my bed, but it was a very serious question whether I would survive, and during the latter part of the trial they came down to the house and I testified there and they brought two of my physicians with them, and they questioned me for a while and then the doctor thought they had better let up for that day; they done so and returned the next day, or came the second time to take some more testimony. Now I just speak of that from this fact, that I don't want to claim anything on account of my weak condition at the time I testified for I believe that what I stated at that time were true facts which I can carry out and the books will show them today.

Q. But you were in a physical condition that made you a little more conservative than your present condition, is that it? You were facing the future apparently, is that what you mean?

A. No sir; I will say this, that if I stated before that the losses were sixty eight thousand, I would say that they were at least that amount, and undoubtedly if I had tried to make them twice that amount I could have done it, and I haven't in this trial tried to state all the losses.

Q. You think you were lucid when you testified before?

A. Yes, sir.

Q. And you had before you your schedules all compiled, and used them?

A. I didn't have my schedules all before me.

Q. You used some of them in giving your testimony?

A. Some of them, yes sir, but they were not all there.

Q. You had them compiled and typewritten?

952 A. I want to correct your statement when you said I had them all there. That is not true.

Q. Now, Mr. Jones,—did you ever see the note, or what purported to be the note of F. S. Johnson & Company of \$9,968.00 that purported to have gone into the bills receivable of the Capital National Bank, in 1886?

A. I did not.

Q. You didn't see who signed the note?

A. I did not.

Q. Nor never saw the handwriting?

A. If I didn't see the note I wouldn't see the handwriting.

Q. Did you see the note or what purported to be the note of the First National Bank of Hastings, which purported to have gone into the bills receivable of the Capital National Bank?

A. No sir, I never saw the note.

Q. Or of the First National Bank of Kearney?

A. No sir.

Q. I noticed that you used the expression that those were forged notes. Now do you testify to that as direct evidence, or is that a mere conclusion as an accountant?

A. No, my authority for that is that I talked with the purported makers of those notes,—F. S. Johnson himself.

Q. That would be hearsay, and not evidence.

A. Well that is how I know it; he told me they never signed the note, and Mr. Clark told me the same thing.

Q. You never saw the notes?

A. No, but they told me that they were forged.

Q. You had made inquiries from outside sources?

A. I had asked the people whom they claimed gave the notes, and those people told me personally that they never gave such a note, and that if the books showed such a note it was a forgery.

953 Q. Well you reached a conclusion then from what others told you and not from any personal knowledge of your own: it wasn't a matter of personal knowledge in this case?

A. You mean that I did or did not see the note?

Q. You have no personal knowledge of the transaction at all?

A. I wasn't present.

Q. And you have no personal knowledge except as you have examined the books and heard recitals from others?

A. No sir, the man himself told me that he never made such a note.

Q. That is what I asked you, if you have any personal knowledge.

A. Only that and what the books show.

Q. That is hearsay knowledge?

A. Well I don't know; I am not a lawyer,—I suppose if a man tells me that he never signed such a note,—

Q. Do you honestly think that you may repeat what a third man says as evidence?

A. He was a party.

Q. You honestly think that?

A. I honestly do; you present a forged note to me, and I am the one that is interested; I know whether that is or isn't my note.

Q. Can you recall now when you took the deposition of Receiver McDonald in this case?

A. No sir, I couldn't give you the date.

Q. In the year 18— or about the year 1900?

A. It was prior to the trial of these cases some little time. They were tried in 1892.

Mr. THOMAS: 1902.

A. Yes, 1902.

954 Q. Well at the time you were in the Receiver's office you didn't find Mr. D. E. Thompson there, the defendant, did you?

A. No sir, we didn't ask to take his deposition.

Q. No, I asked you if he was there about the records, like the rest of you were,—you didn't see him there?

A. No sir.

Q. Do you know where he was at that time?

A. I have no personal recollection.

Q. As a matter of fact at that particular time you had no personal acquaintance with Mr. Thompson, did you?

A. I knew him.

Q. To speak to him?

A. You would have known him if you had seen him, that was the extent of that?

A. Yes, sir.

Q. And knew him by reputation, but had no personal acquaintance,—he had never spoken to you had he?

A. Yes sir; one time I remember in particular was in the Capital National Bank in 1890.

Q. Is that the only time you had ever seen him?

A. Oh no.

Q. To speak to him?

A. I think I was in his office when he was superintendent one time, in regard to replevining a car of cattle that was being shipped from here.

Q. Did you see him?

A. That is my recollection.

Q. Had you seen any of his handwriting at that time?

A. Yes, sir.

Q. Where?

A. I have seen his handwriting numerous times.

955 Q. Along in 1890?

A. I couldn't state when I first saw Mr. Thompson's handwriting.

Q. Would you say now that you saw it before the year 1902 at any time?

A. Yes sir.

Q. In any official way before that?

A. I can't state now, it is a long time ago.

Q. You were not very familiar with his handwriting in 1902 were you?

A. Not as much so as with some others.

Q. You were not familiar enough with it so you could say you recognized it, were you?

A. I was.

Q. Did you ever get his checks through your bank prior to that time?

A. I have no recollection of that.

Q. Did you ever have his note prior to that time?

A. I never had a note of Mr. Thompson's.

Q. Prior to 1902 had you ever received a written communication from him, or that even purported to be signed by him?

A. I won't be certain as to that; I have received a great many letters in my short lifetime; I wouldn't attempt to state who from, and so forth.

Q. You never had the signature card of his in your bank as a depositor?

A. Oh, no.

Q. Can you recall any occasion before 1902 when you ever had occasion to inquire into the genuineness of his handwriting on any paper?

A. No sir, I never did.

Q. Can you tell us how you became familiar with his handwriting prior to 1902?

956 A. Something that runs in my mind in regard to orders at the time he was superintendent,—but I am not clear on that.

Q. The Burlington orders were printed weren't they at that time?

A. I don't refer to orders to railroad men or anything of that kind. What I meant would be in a public way, it seems to me that in the early days that the paymaster's checks and things of that kind bore his name—his signature. Now I wouldn't want to be positive about that, but that is my impression. As I say eighteen or nineteen years is a long time.

Q. You have been getting pay checks of the Burlington for a long while haven't you?

A. Yes, sir.

Q. As a matter of fact they were always signed by the treasurer and countersigned by the pay-master also. To refresh your recollection, do you know that as long as the Burlington has run here the men were paid by a pay-master, who came out in his own car from the headquarters at Omaha?

A. I wouldn't attempt to say what was the custom, but I would say this that I know of my own knowledge that the time was when our railroad men here would wait for the pay-car; I know of times

when they haven't done that; they have been sent to the agent and the agent would distribute them, and I would say as to the forms of those checks, I think that while I was in the banking business they even changed their forms and at times they were signed, I would say, by several people.

Q. The business done by the agent, or the pay checks delivered by the agent were to persons who for some reason or other were absent when the pay car came to their station.

A. Not in some instances I refer to. I will tell you why; there have been some of the men that were at work on the section would want to borrow some money; they would give me an order
957 on Mr. Ost, Freight agent here, and I would accept this order and the pay check would come around from Mr. Ost to me in that way.

Q. Yes, where the company had notice of the assignment of wages, then the paymaster couldn't give it out.

A. Oh no, I don't refer to anything of that kind at all.

Q. I thought you referred to the assignment of the order which you left with the agent.

A. That was simply an order on the agent here; he didn't report that in to the company; the company had no notice of that whatever. It wasn't beyond the home office here.

Q. Well now after all, are you sure when you were in the office of Receiver McDonald, sometime prior to the taking of his deposition that you could verify the signature of Mr. Thompson?

A. I think so.

Q. You just think so on general principles?

A. No, I will say this way; I think I know your signature, and I don't believe I could say now just where I ever saw it even the first time, or the last time, Mr. Rose.

Q. Well I have gone into your bank and worked you to cash a check and you saw me sign it.

A. Yes, sir.

Q. But you never had that experience with Mr. Thompson?

A. No sir, I don't remember of any such experience with Mr. Thompson; I know I didn't have personally.

Q. In the other case, where you said you knew all the signatures except Holmes, in those particular reports the name of Mr. Hamer wasn't appended was it?

A. No sir, my answer to that referred only to those he examined me on, the particular one. I am acquainted with all of the signatures of the directors excepting Mr. Hamer and Mr. Holmes, and there was only one statement here which was signed by Mr. E. P.
958 Hamer.

Q. And when you came to that you said you wouldn't say that you knew his signature.

A. Or words to that effect.

Q. So you had no occasion to mention it except in that one report because that is the only one in which his name appeared?

A. Yes, sir.

Q. Now in respect to Mr. Yates, how long had you known his

handwriting prior to the time when you allege you saw these papers in the hands of Receiver McDonald?

A. I don't remember.

Q. But the particular instant when you claim to have seen the original signatures were on what purported to be records of the Comptroller of the Currency from Washington that for some purpose he had for the time being transmitted to the Receiver of the Capital National Bank, isn't that correct?

A. That would be, part of it, but you would find among the records of the Capital National Bank in various forms many signatures of these officers.

Q. No, but the records about which you are testifying and the signatures upon which you are testifying to refer to the records which purports to have been sent from the Comptroller at Washington?

A. Some of them went to the Comptroller, and some of them went to the printer.

Q. I understood that you claim to have examined the proofs of publication made up for the Comptroller of the Currency. Is that what you claim to have examined?

A. I examined the original which was made up by the officers of the bank and which was published in the newspapers and was afterwards,—

Q. That is on a purported original,—there was proof of publication on the reverse side, consisting of the notice or the printed
959 statement which is clipped from the newspaper and the affidavit of someone connected with the paper that it had been published in the particular paper on the particular day.

A. That is one side.

Q. And the other side was a statement?

A. Yes, sir.

Q. Made up and forwarded to the Comptroller of the Currency?

A. Yes sir, after this is done.

Q. Now then some years after the failure of the bank you claim that you run across a portion of those original proofs of publication that purported to have been transmitted to the Comptroller of the Currency?

A. Yes sir.

Q. After publication.

A. Yes, sir.

Q. They were properly the files of the Comptroller's office in Washington?

A. Yes sir.

Q. But for some reason that you don't know, they appeared to have been sent out to the Receiver of this bank?

A. They were sent out to the receiver, at the receiver's request to be used in suits brought.

Q. That was your understanding?

A. So the Comptroller of the Currency wrote me; I wrote and asked for some copies and he wrote me to this effect.

Q. You were trying to identify the character of the papers that you claim to have seen the signatures on?

A. Yes sir.

Q. That was at least as early as March 1902 that you saw those?

A. Several years prior to that.

960 Q. 1902 I said.

A. Yes sir, it was prior to that.

Q. Well it was just prior, as I understand you, it was just prior to the time that you took the McDonald deposition.

A. That was the last time I saw them.

Q. I understood that was the only time you ever did run across them.

A. Oh, no. We had them when we was making the examination and preparing to take those depositions; on that day, that you refer to, we had gone in there and arranged the books and papers in the vault that we thought we would use in taking the depositions so as to have them handy.

Q. Now who had access to the vault that day that you know anything about?

A. Who did?

Q. Yes sir.

A. Why it was in charge of Receiver McDonald.

Q. I said, who had access that you know of,—you and Mr. Thomas and Mr. Norval?

A. Yes sir.

Q. And Mr. Dartling?

A. No sir.

Q. Mr. Whitmore?

A. No sir.

Q. Who else?

A. I don't think there was anyone else there.

Q. Only the employees of the receiver.

A. Yes, sir.

Q. There were no employees of any of these defendants there when you saw those papers?

A. On this day that we were arranging them?

Q. Or any of the attorneys of these defendants?

961 A. No sir.

Q. Mr. Yates, or Mr. Hamer or Mr. Thompson, none of them were there?

A. Not at the date I was arranging these papers to get ready to take the depositions as I have stated.

Q. You never did see them in the receiver's vault, neither one of them, did you?

A. I don't think I ever did.

Q. You never saw any of the attorneys there either did you?

A. Unless it was——

Q. When they were there in answer to that notice to take depositions?

A. That's the only time when we was taking the depositions, is the only time I ever saw them there.

Q. Now did you ever have any notes, or cash any checks of Charles E. Yates, prior to that time?

A. No sir.

Q. Did you ever have any letter from Charles E. Yates prior to that time?

A. Not to my knowledge.

Q. Did you really have a personal acquaintance with Mr. Yates prior to that time?

A. I knew him in a general way.

Q. Personally—to speak to him and correspond with him,—have a business acquaintance with him.

A. No sir.

Q. Ever have any occasion in business transactions or otherwise to inquire or ascertain about any genuine signatures of his?

A. Oh no, our talk would be general,—just pass the time of day, unless it would be—naturally our talk would drift to banking, he interested in the Capital and I interested in the Jones National.

962 Q. Where did you see him prior to that time?

A. Saw him and talked with him in the Capital National bank.

Q. Now could you really say that you knew his signature at that time?

A. I think so.

Q. What were the sources of your information?

A. From papers on which I had seen his name written.

Q. What papers had you seen his name written on at that time?

A. In the bank there.

Q. When you saw his name written on a paper you could tell without having previously seen it that it was his genuine signature and swear to it, could you?

A. Oh no. We learn signatures the same as we learn many other things; we learn things without actually seeing them done or performed.

Q. And you learn a man's handwriting that way so you could verify it?

A. Yes sir. I have had men come to me with an instrument and ask me if that was their signature, and I would say Yes, it was. Well now I wouldn't ask that gentleman to please write his name so I could compare it.

Q. Do you think Mr. Yates ever before that came to you with a paper and asked you if that was his signature, and gave you any occasion to verify it?

A. No sir, but I can as a banker, I am acquainted with a great many signatures whom I have never saw, or never saw write the name.

Q. And you would take their checks without ever having seen them, or having their signatures vouched for?

A. Well of course there is a certain amount of discretion that is used in all those things. I never saw a single cashier of the eastern

963 banks I have done business with, still I have papers that bore their signatures for a considerable amount of money, and I accepted them as their signature, and they have done the same thing with me.

Q. Well you thought their bank would be bound by it anyway?

A. Not necessarily, but I am just saying that it is not necessary to see a man write his name in order to be familiar with his signature.

Q. There is nothing about the occupation of a banker that gives him any intuitive knowledge when he sees a paper that it bears the genuine signature of the man's name whose signature purports to be on it, is there?

A. Oh, no, I could make a good banker out of a very ordinary man.

Q. You have spoken of reading testimony of other persons in other cases. You have made quite a good deal of outside inquiry into the affairs of the Capital National Bank, haven't you?

A. Considerably, yes sir.

Q. You have had the benefits of the records of the suits in the Federal court,—the Gurner suits and other suits, and you consulted freely with receiver Hayden?

A. I did.

Q. And was it receiver Hayden that first called your attention to the incorrect footing of the individual deposit ledger?

A. Of the \$100,000?

Q. Yes.

A. Yes, sir.

Q. And he first called your attention to the irregularities in the certificates of deposit?

A. No, Mr. Griffith was the man that called my attention first to those.

Q. And you have spent all told probably six or eight months' continuous work on the records?

964 A. I wouldn't be surprised.

Q. In delving into the affairs of that bank.

A. Yes sir.

Q. You have followed up every lead that you could learn of from any outside source?

A. No sir, I haven't; life is too short to do that.

Q. But you have sought every source of information to show that these particular transactions to which you have testified were different from what the individual book entry would import?

A. I will say that to my own knowledge I have only testified to part of the irregularities which I know existed in those books. The same is true of the falsifications; I have only testified to a part of them.

Q. But you haven't taken time even yet to work out the accounts,—all the accounts where you find irregularities and make up a correct account?

A. I had the time, but I haven't agreed to do that.

Q. Have you read all the book entries of this bank?

A. No sir, I haven't.

Q. Have you examined all the books of this bank at one place or at another?

A. It is owing to what you mean by an examination; if you mean a complete examination of all the books of the bank, I have not.

Q. You have only traced out the separated, or what you called the related entries or transactions in order to figure out the ultimate result and conclusion as to whether a transaction was bona fide or otherwise?

A. On any transaction that I have testified to I examined all the books and records of the bank that would refer to that particular transaction.

965 Q. This Mr. Hayden who discovered those balances had

been an examiner of that bank for a long while, hadn't he?

A. I don't know. He was an examiner at one time; I don't know whether he examined this bank or not.

Q. He examined the books repeatedly in his capacity as United States examiner.

A. Not to my knowledge.

Q. And Mr. Griffith who found discrepancies in the certificate of deposit account told you immediately upon the failure of the bank,—before they came in?

A. He called my attention to it while he was receiver.

Q. Before he was appointed.

A. Well he was acting as receiver.

Q. Well he was custodian as agent for the Comptroller?

A. When he was in charge, whatever that might be technically.

Q. And he never knew of the discrepancies, or how much the certificates would overrun until the certificates came in?

A. He never talked to me along that line; what he talked to me about was these fraudulent ones that appear at one place as one amount and then appeared at some other place at a different amount, in different books of the bank, and then oftentimes under different names in the books.

Q. Did you know that including all the irregularities and losses he had discovered at the time he took that bank in charge that after he was in charge of it that he only insisted on \$160,000 being made up?

A. I know this that he never made a detailed examination for the reason that he knew that he was simply holding that position temporarily until the department could appoint a receiver?

966 Q. Well he offered to turn it back on the payment of \$160,000.

A. I know nothing about that.

Q. You know this, that these discrepancies of nearly a half a million in the certificates of deposit outstanding from what the books showed, he couldn't tell what it was as long as the certificates were out and not in.

A. Oh no, that is true; he couldn't tell all of that.

Mr. ROSE: That is all.

Redirect examination.

By Mr. THOMAS:

Q. Mr. Jones, you have been examined only with reference to the

earliest published report that has been offered in evidence. Now does that report contain as many discrepancies and falsifications as a later one?

Mr. ROSE: Each of the defendants objects as merely argumentative, and not proper redirect examination, and assuming.

Objection overruled.

Each of the defendants excepts.

A. It does not.

Mr. ROSE: Each of the defendants move- to strike out the answer as a mere conclusion, and not proper redirect examination?

Motion overruled.

Each of the defendants excepts.

Q. In the report of July 9th, 1891?

Mr. ROSE: Each of the defendants objects as not proper redirect examination.

Q. And I will ask you to state if there are any irregularities in that in addition to what the schedule Exhibit "AC" shows?

* * * * *

967 Q. Now I will call your attention to the report on the books of the business of the bank at the close of business July 9th, 1891, with particular reference to the amounts shown by the books in eastern banks, such as the Chemical National, the American Exchange and the Commercial National bank, and compare that with the published report.

A. You want me to take the reports and the books and show it?

Q. Yes sir, show any discrepancies there may be there,—or compare it with the detailed report to the Comptroller.

Mr. ROSE: That is objected to by each of the defendants as having been already gone over, and a mere repetition, and the witness has given his discrepancies.

The COURT: If there is anything omitted from this Exhibit "AC" I will permit him to state it now.

Each of the defendants excepts.

A. Well the first thing I will speak of then is the Chemical National Bank; the report to the Comptroller of the Currency shows that they have in the Chemical National Bank subject to check or draft \$27,672.60. Now then the books of the bank show that they haven't got a dollar in that bank on which they can check; it shows an overdraft of \$27,672.60. In other words they represent to the department a credit, when it is an overdrawn account.

968-974 The report to the department under the head of the American Exchange National Bank shows \$4,109.81 to their credit, subject to their check, when the bank book shows that that account is overdrawn \$4,109.81. They just simply reversed it. The same report shows the Commercial National Bank of Omaha as \$13,123.67 on deposit and subject to their draft or check, when the books show that that account is overdrawn \$13,123.61. It

shows the United States National Bank has to their credit \$7,079.74, when the books of the bank show \$1,984.76 only. Now if there is any mistake I had rather take the book and call these figures from their own book than from my copy. What do you say Mr. Rose?

Mr. ROSE: You might check them with your copy, and see if you have them correct.

* * * * *

975 Q. Now, Mr. Jones, if you as a banker, or if you were
doing business with a bank and you were examining its report
976 of its condition, resources and liabilities, would it to you
signify any difference whether this amount of fifty odd thou-
sand dollars was shown in that report as overdrawn on its eastern
correspondents, or whether it appeared *it* there as a general deposit?

Q. What effect would that have upon the legal reserve of the bank?

A. It increased the legal reserve of the bank.

Q. In what way,—to the amount to which it is falsified?

A. I mean the books themselves show an overdraft, and they have falsified the report by in place of showing an overdrawn account they have shown a credit account,—money which those banks owed them, or they had in those banks subject to draft.

Q. What is the general significance of the item which appears in these reports under the head of deposits, that is individual deposits and demand certificates of deposit?

A. That shows the amount of money that has been deposited in the bank under those various heads.

Q. By whom, in a general way?

A. By people doing business with the bank.

Q. That would be a voluntary deposit by the various parties in the Capital National Bank?

977 A. Yes sir.

Q. Is that a similar transaction to one where the Capital National Bank had overdrawn its account in some other bank?

A. Entirely different.

Q. What would it indicate as to the condition of that bank as to whether it was in good condition or otherwise?

A. It improves the apparent condition of the bank to the amount of the falsification.

Q. Mr. Jones, to illustrate, if a statement—a published statement indicated that the bank had on deposit,—owed its depositors \$400,000, we'll say, in one report. You saw that report, but as a matter of fact it only had on hand as actual deposits \$250,000 and the other \$50,000 of that item classed as deposits was actually an overdraft in its eastern reserve agents, what would be the result,—what effect would it have upon the statement as to showing the solvency or the financial condition of the bank?

A. When a person or a bank is borrowing money it shows that it is short of funds, and no bank would make an overdraft,—borrow money by an overdraft if they were in what we would call good condition.

978 & 979 Q. A bank of the size of the National Capital Bank at the time of this report, which had overdrawn on its eastern reserve agents upward of \$50,000, would that reflect a good or a bad condition?

A. It shows a poor condition of the bank at the time of the overdraft.

* * * * *

980 H. J. WHITMORE, recalled — further direct examination.

By Mr. THOMAS:

Q. Mr. Whitmore have you made an examination and comparison of Exhibit X-982 purporting to be a published statement of the condition of the Capital National Bank at the close of business December 12th, 1888, and Exhibit X-1042a, purporting to be the condition of the Capital National Bank as shown by its general deposit ledger of the same date, the same appearing under the head line of December 13th, 1888?

A. Yes, sir.

Mr. THOMAS: We offer in evidence Exhibit No. 1042a being contained in Exhibit No. X-20 purporting to be the condition of the Capital National Bank as shown by its General Balance book under the head line of Thursday, December 13th, 1888.

Exhibit No. X-1042a received in evidence.

(Copy on the following page.)

981

EXHIBIT No. 1042a.

THURSDAY, Dec. 13/88.

Capital Stock.....		\$300,000.00
Surplus		20,000.00
U. S. Bonds.....	50,000.00	.....
Premium a/c	4,000.00	.....
Circulation a/c		45,000.00
Redemption Fund.....	1,730.00	.....
Stock & Bond a/c.....	9,148.88	.....
Furniture	5,650.00	.....
B./R.	815,148.96	.....
	65,855.07	.....
Cash	65,754.97	.....
Bills of Exchange.....	32,218.85	.....
Chemical Nat'l Bank.....	43,202.41	.....
American Exch. Nat'l Bank....	13,941.49	.....
Commercial Nat'l Bank, Omaha.		1,904.23
U. S. Nat'l Bank, " ..	12,713.47	.....
Omaha Nat'l Bank, " ..	6,228.26	.....
Merchants Nat'l Bank, " ..		4,632.84
First Nat'l Bank, Kansas City..	1,496.27	.....
Schuster Hax & Co.....	739.33	.....

Drovers Nat'l Bank.....	49.29	.....
Blackstone Nat'l Bank.....	951.22	.....
American Exch. in Europe....	725.40	.....
South Omaha Nat'l Bank.....	1,288.94	.....
Merchant's Nat'l Bank, Neb. City	450.82	.....
First Nat'l Bank, Beatrice.....	.....	3,132.95
Bank of Cass County.....	39.86	.....
Commercial Nat'l Bank, Chic...	5,431.53	.....
Clearing House a/c.....	.....	4,892.06
Knauth Hachod and Kuhne....	254.80	.....
Walsh and Putnam.....	8,500.	.....
Undivided Profits.....	.....	305.12
Rediscount a/c.....	.....	111,180.43
Real Estate a/c.....	22,608.03	.....
C. W. and W. W. Marsh Coll...	4,752.21	.....
Discount, Interest and Exch....	.....	37,309.68
Wages a/c.....	7,769.93	.....
Suspense a/c.....	14.62	.....
Interest Paid a/c.....	10,444.14	.....
Expense a/c.....	2,883.62	.....
	<hr/>	
	1,128,137.50	528,357.31
Deposit a/c.....	.....	599,779.99
	<hr/>	
	21,112.31	11,529.18 O./D.
	.....	41,043.01 D. L.
	10,500.	4,528.93 Bks.
	<hr/>	
	1,128,137.30	1,128,137.30
	57,101.12	
	<hr/>	
	1,185,238.42	

982 Mr. THOMAS: We offer in evidence Exhibit X-982 being the published report of the same date.

Exhibit No. X-982 received in evidence.
(Copy may be found at page 423.)

Q. Have you compared these two statements to ascertain if there are any discrepancies or variations in them?

A. Yes, sir.

Q. You may state what they are?

983 A. I examined the statement purporting to be a published report of the condition of the Capital National Bank at the close of business on December 12th, 1888, and compared the same with the General Balance book and the individual ledgers of the bank and I find the following discrepancies: Individual overdrafts according to the balance book \$52,572.19; as published \$11,529.18. The individual overdrafts as published are \$41,043.01 less than the deposit ledger shows. The loans on the books are \$815,148.96, and as published \$860,944.18 being \$45,795.22 more than the books show. Due from all banks, balance book \$87,523.09; as published

\$132,760.87 being \$45,237.78 more than the books show. Bills of Exchange amounting to \$32,218.85 are not shown as such in the published statement. The total as published is \$1,185,238.42. The general balance book total, adding the individual overdrafts and the bank overdrafts makes the same amount. There is no deduction of any of the expense items in the published report, but the published report shows the amount of the expense items \$21,112.31 being the total of all of the expense items on the general balance book.

984 Q. Mr. Whitmore, have you prepared any schedules which show the amount of directors' paper, that is bills receivable executed by the various directors which was held by the bank and a part of their bills receivable at the dates of the various reports to which you have testified?

A. I have made up from the ledger accounts that are in evidence here the directors' paper,—the amounts that were due from those directors at the time of these various reports.

Q. You have it in schedule form?

A. No, I have it down here on my memoranda.

Q. Not in the form of a schedule?

A. No sir.

Q. You may then state the amount of that paper at the date of the various reports.

A. I will give the name and the amount due from each one.

A. Exhibit No. X-1039, December 28, 1886; I will give the names in the same order on each of these reports. This is December 28th, 1886,—Outcalt \$1,500. Phillips, \$2,850. Holmes, \$3,300; Mosher \$5,964.50. Total \$13,614.50.

Mr. ROSE: May I ask Mr. Whitmore a question in that connection.

The COURT: Go ahead.

Mr. ROSE: Why do you include Outcalt as a director?

A. I understood he was a director; they gave me these names as names of the directors and I have not examined the reports to see who were directors at that particular time. Of course if he was not, his name should not go in.

985 A. (continued).

August 1st, 1887, Exhibit X-1040:

Outcalt	\$1,354.03
Phillips	1,320.00
Holmes	4,000.00
C. W. Mosher	30,977.96

Total	37,651.99
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Exhibit X-1041, October 5th, 1887:

Outcalt	3,937.36
Phillips	2,500.00
Thompson	6,000.00

Holmes	4,000.00	
Mosher	20,313.12	
	<hr/>	
Total.....		36,750.12

Exhibit No. X-1042, December 12th, 1888:

Outcalt	12,410.00	
Phillips	3,952.00	
Thompson	2,500.00	
Holmes	15,000.00	
Mosher	28,464.53	
	<hr/>	
Total.....		62,326.53

Exhibit No. X-1043, September 30, 1889:

Thompson	5,100.00	
Holmes	17,000.00	
Mosher	48,311.20	
	<hr/>	
Total.....		70,411.20

Exhibit X-1044, December 11th, 1889:

Thompson	2,000.00	
Holmes	16,500.00	
Mosher	48,311.20	
	<hr/>	
Total.....		66,811.20

Exhibit X-1046, December 19th, 1890:

Outcalt	8,630.00	
Mosher and Outcalt	3,138.72	
Thompson	5,000.00	
Mosher	60,211.20	
	<hr/>	
Total		76,979.92

Exhibit X-1047, July 9th, 1891:

Outcalt	20,700.00	
Phillips	5,642.09	
Mosher and Outcalt	5,218.72	
Thompson	500.00	
Mosher	19,711.20	
	<hr/>	
Total.....		51,772.01

Exhibit No. X-1048, September 25, 1891:

Outcalt	21,418.	
Phillips	8,206.68	

Mosher and Outcalt	5,218.72	
Thompson	500.	
Mosher	29,711.20	
Total		65,054.60

986 Exhibit No. X-1049, December 2, 1891:

Outcalt	21,418.00	
Phillips	3,564.59	
Mosher & Outcalt	5,218.72	
Mosher	29,711.20	
Total		59,912.51

Exhibit No. X-1050, December 9, 1892:

Outcalt	12,480.00	
Phillips	1,000.00	
Mosher & Outcalt	5,635.	
Mosher	29,659.53	
Total		48,774.53

I have with each one of these the amount as shown in the copies of the reports that are in the record, if it would be any help to you,— if you want them taken down.

Q. You may give us those for convenience.

A. Exhibit X-1039, total \$10,600.00.

Mr. ROSE: In the report?

A. In the report.

Exhibit No. X-1040, total in the report	31,790.00
1041, total in the report	14,677.
1042	41,091.83
1043	45,933.33
1044	41,100.00
1046	50,930.00
1047	12,642.09
1048	22,642.09
1049	41,961.31
1050	33,898.72

Q. I will ask you if you have examined Exhibit "D" attached to the depositions of Mr. Ayres and Mr. Biglow that were taken in New York, and purported to be a copy of the ledger of the Chemical National Bank of New York with the Capital National Bank at Lincoln for the month of December 1885 and January 1886, and if you have compared that with the account contained in the ledger of the Capital National Bank with the Chemical National Bank for that same period?

A. Yes sir, I have.

987 Q. Now with reference in particular to an entry appearing on the books of the Capital National Bank, on its ledger, page 378, and also on the Journal, identified as Exhibit X-31, page 231, under date of Monday, December 28, 1885, there appears a charge to the Chemical National Bank for the sum of \$20,300. Have you made an examination of the account of the Capital National Bank for that same period to ascertain if the books of the Chemical National Bank of New York correspond in that regard with the books of the Capital National Bank?

A. Yes sir, I have.

Q. What is the result of that examination?

A. I have examined the copy of the ledger account of the Chemical National Bank as it appears in the testimony, or the deposition,—the exhibit referred to, and I am unable to find that the Chemical National Bank has ever credited the Capital National Bank with that item of \$20,300.00.

Q. Have you examined the ledger account of the Capital National Bank for that period to ascertain whether an apparent reconciliation had been made of that account?

A. Well I have examined the account, and what appears to be a memorandum of reconciliation, made by some one, as it appears in lead pencil on the ledger for December, 1885.

Q. And what does that indicate?

A. Opposite the item of \$20,300.00 charged to the Chemical National Bank on December 28th, 1885 the word "out" is written in lead pencil, and after two other items, one on the 21st of September of \$137.09 and one on the 28th of \$125.00.

988 Q. Calling your attention to Exhibit X-1037 contained in ledger, Exhibit No. X-3, and being a charge to the United States National Bank of \$20,000, with the indication "N. Y." I will ask you if you have examined the books of the bank to ascertain if any corresponding credit is made to any New York bank on that date?

A. Yes sir, I have.

Q. What are the facts?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. I am unable to find any corresponding credit on that date, to any New York bank.

Q. Or the day following?

A. Nothing on the day following.

Cross-examination.

By Mr. ROSE:

Q. Mr. Whitmore, in the account last mentioned, or in the account in which you found pencil notations with the word "out"

opposite the item of \$20,300, when was that pencil notation made there?

A. I haven't any knowledge on that, it was there when I first examined the books.

Q. By whom was it made?

A. I don't know that.

Q. Was it made during the life of the bank?

A. I presume it was.

Q. What is your personal knowledge of that?

A. I have no personal knowledge except what I found all through the books.

989 Q. I just want to know what your personal knowledge is.

A. I find throughout the ledger,—

Q. But in this account here?

A. I have no personal knowledge except the fact that the word "out" is there.

Q. You couldn't verify the entry?

A. No sir.

Q. Now there is just as much evidence isn't there that somebody has been working throughout the balance books when these reports were made, as there is to think that somebody had been reconciling that account with the Chemical National Bank?

A. Well from what I know about the practice of banks with their correspondents, why the evidence all through that book in these accounts indicates that they attempted to make a reconciliation of them every month; I wouldn't say every month, but there are entries there when they made them; of course they may have taken two or three months at a time, and did the work on it at one time. They might not have reconciled each account the first week of the following month, and they might have accumulated.

Q. That is correct as far as that is concerned. I wasn't criticising you. You do know also that in making out a report, assuming that the balance book entries corresponding to the date of the call are in the ma-n the basis of the report, you know from the way this bank kept its books that there would have to be some reclassification, or some change in the deposit account in order to bring the deposit account up to where it should be and also to show the overdrafts, don't you?

A. Yes sir.

Q. And a reconciliation of the changes would naturally be made in compiling the report?

990 A. There would be some figures added at the bottom of the totals of the deposits; that is, the overdrafts would be added.

Q. And you find evidence that somebody at the dates of these reports has noted in pencil there, changes made from the balance book?

A. I find those figures there.

Q. Corresponding with every day when a report appears to have been compiled?

A. Yes sir, I think they are there at the bottom of the page, as I testified the other evening.

Q. Now if an item had been charged,—suppose an item had been charged to New York, whether it is regular or not to charge the item up to New York at the time of remittance, it is sometimes done by correspondent banks, on the presumption that the rediscounts would be accepted?

A. Remittances are charged on the day that they're sent; remittances that are sent from a bank are charged upon the day that they're sent, because the items go out of the bank and are mailed, and naturally they want something on the books to show for it.

Q. And the same course, whether it is strictly accurate or not, is in practice sometimes pursued in rediscount paper, when it is forwarded?

A. Yes, sir, sometimes they charge up the rediscounts at the time they send the paper out.

Q. My own understanding is that they are not entitled to charge it until they get an acceptance of it; it sometimes happens that the correspondent bank refuses to rediscount the paper, doesn't it?

A. Yes sir, sometimes.

Q. Now suppose that notes aggregating \$20,300., had been sent and charged in that way to the Capital National Bank, and that the rediscounts had not been accepted but had been returned and
991 assuming that the aggregate of the rediscount items had been charged on the date of forwarding, would it be possible then to reconcile the accounts of the two banks, the one with the other as to that item?

A. Why if it was refused, it would be credited back by the home bank.

Q. It was credited back in this case, wasn't it?

A. I have not been able to find it as credited back.

Q. The balance finally reconciled in the course of time?

A. I don't know how the account stood at the time the bank closed.

Q. There had to be a corresponding credit to make the account balance?

A. I don't know what the condition of the bank's books was at the time they closed.

Q. How long after the date of this entry did you follow the books of the Capital National Bank,—well what was the corresponding credit, if any?

A. I didn't find any.

Q. You don't mean to say that from 1885 to the failure of the bank the books never reconciled as to balances?

A. I don't know what they did.

Q. You haven't traced it out?

A. No I couldn't; all of the journals are not here, but I looked through the ledger accounts of the Capital National Bank with the Chemical National for two or three months after that time and found nothing to correspond with that entry.

Q. Now I want to ask you in respect to the certificates of deposit that you found where upon the certificate register there seems to have been a notation "paid", and for which claims were, you say, ulti-

mately allowed by the receiver aggregating \$15,954.35. Where did you ascertain about the allowance of those items by the receiver?

992 A. Why I think Mr. Rose, you are mistaken as to my testimony. Did I testify that receiver's certificates were issued for certain items?

Q. You said there were certificates outstanding, and marked paid on the books,—but the certificates were outstanding,—you said that there were certificates outstanding, and I am not sure but you gave a list of them in the early part of your testimony, which had been marked paid on the books, aggregating \$15,954.35. My recollection is that you said Receiver's certificates were issued for them upon the surrender of the certificates, after the failure of the bank.

A. You are mistaken as to that, Mr. Rose. Those amounts were \$15,231.58.

Q. I have it \$15,954.35.

A. I think I remember now what it was.

Q. Have you got such a list as that?

A. Yes sir, I have a list of that.

Q. I don't care particularly only to identify the items. You recall the schedule now, do you?

A. Yes sir. I was confused with the proof I made of the overdrafts in the certificate account.

Q. Well now, where did you ascertain, or obtain the proof of the receiver's allowance of those?

A. I examined the receiver's record of receiver's certificates that were issued.

Q. Is that book here—has that book been identified here upon this trial?

A. No, I think not.

Q. Not been produced here at all has it?

A. No, it is the books of account kept by the receiver of the Capital National Bank; they open up a set of books themselves.

993 Q. But it is the source of inquiry from which you ascertained that evidence, and it has not been presented here in court so we could have any opportunity to check it over?

A. I think not; I think the certificates themselves are all of them here in evidence.

Q. Probably they are.

A. I have examined all of those certificates, and none of them are stamped as paid.

Q. As long as those certificates were outstanding how could you check against them?

A. There is no way, Mr. Rose, to determine the amount of a certificate of deposit while it is outstanding except by an inspection of the certificate itself.

Q. Now what significance do you attach to the mere fact that the certificate register had a notation of payment in these cases?

A. Because that indicated if the certificates were marked paid and were actually outstanding at that time, that there was a falsification of the books of the bank on that register?

Q. Are there daily footings of the register,—is that strictly speaking a book of account, the register?

A. That is a book of account.

Q. You are prepared to say that is a book of account?

A. Yes, sir, that is the book of original entry, really, of the certificates.

Q. Well now, Mr. Whitmore, did you check that register with the ledger account?

A. No, sir—I have checked it some.

Q. Do you know whether at the time of payment there is a corresponding debit to the certificate of deposit account on account of that very certificate?

994 A. No, I don't know; I could tell if a certificate of that amount was charged up as paid on that day.

Q. But you haven't even checked that, have you?

A. No, sir.

Q. But of course you have noted in many cases where the certificate stub, or the register showed a small amount in comparison with the face of the certificate. But the deposit account of certificates was actually credited with the correct amount as shown on the face of the certificate?

A. In some cases it was and in some cases it wasn't.

Q. Well it was in a number of cases?

A. Yes, sir; I have a list of them here; they are all shown here.

Q. So in order to determine whether that entry on the register in fact affected the general accounts of the bank, the general ledger accounts, you would have to check up the certificate of deposit ledger and ascertain by some means whether there was a withdrawal of any funds on account of the entry in the register wouldn't you?

A. Oh, if you wanted to check up any particular certificate, you would, yes, sir.

Q. And you would have to do that with each certificate?

A. Yes, if you wanted to check the account through.

Q. Now you testified in respect to certificate of deposit No. 25097, in which the stub and register entries both agreed at \$50.

A. The stub was \$50.00 and the register was \$50., yes, sir.

Q. What was the corresponding entry, if you have been able to trace it, in the deposit ledger account?

A. Fifty dollars, when it was issued.

Q. You traced that, did you? The deposit ledger showed an increase of that account, \$50.00?

A. Yes, sir.

995 Q. Now the import of those entries, so far as the books showed at that time, while the certificate was outstanding, was that fifty dollars had been deposited upon a certificate of deposit?

A. Yes, sir.

Q. While that certificate was outstanding, what way would there be of checking the integrity of the item?

A. There would be no way except to call in the certificates of course.

Q. You understand that a certificate is negotiable, and you might be able to call it in and you might not?

A. Yes, sir.

Q. Certificates No. 21379 and 25097 were each for \$50,000 were they not?

A. Yes, sir.

Q. Now isn't it a fact that when they were actually surrendered that they were merged into, or a new certificate of deposit was issued for \$100,000?

A. I could tell if I had the certificate register here.

Q. I will pass that for the present; it will take you sometime to look it up. Now have you given testimony as to the aggregate which the certificates of deposit produced here and which came into the hands of the receiver after the failure of the bank, overran the deposit account?

A. No, sir.

Q. Did you ever check that up?

A. I think I checked it up eight years ago, with the receivers books and the certificates. I think there is a list of those certificates that I checked over and compared the certificate with that list.

Q. Of course what you said in respect to this \$50.00 item while the certificate was out would apply to those items. While the certificates themselves were out, there would be no way of telling that the outstanding certificates in face over-ran the sum of \$86,000 and upwards which the books showed were out, by a sum approximating half a million dollars,—that couldn't be checked, with the certificates themselves out?

A. The amount of certificates actually outstanding could not be determined from the books of the bank,—

Q. But of course when they came in you would have an absolute check upon them?

A. As these books were kept.

Q. Or as any books are kept, if a false amount is credited to the deposit account, and that false amount carried through the register and stub, and every other record, there is no system of books then that would disclose that until the certificate itself came in?

A. No, sir, in such a case as you state it couldn't be determined without an inspection of the certificate.

Q. That is, where you, have a criminal in the bank who will take in money on a certificate of deposit and make a false entry in the book to hide the fact that he has negotiated it for a large sum of money, there is no way of checking that until you can get the item home?

A. As to one entry made in that way, Mr. Rose, so long as that certificate was out there is no way of determining that a certificate is out for a greater sum than the books show.

Q. Of course where the members of the Board of directors I suppose, who are not active managers of the bank get knowledge that one of the officers, or have their suspicions aroused that one of the officers had done a thing of that kind, they probably could employ an accountant and undertake to check and audit all the books, but

was the use of a public accountant in vogue, that is in private business generally in this country until within twenty years past?

997 Mr. THOMAS: Plaintiffs object as not proper cross-examination.

Objection overruled.

Plaintiffs except.

A. I don't know Mr. Rose, how long there have been public accountants in use in this territory,—in Nebraska, in private business, I mean.

Q. But the audit companies in actual practice were not employed like they are now here twenty years ago?

Mr. THOMAS: Plaintiffs object as not proper cross-examination.
(Question withdrawn.)

Q. Now your schedule of dividends. Did you assist,—or were you assisted in that by any reference to the record book of the bank?

A. I think that I referred to the record book of the bank also, eight years ago in checking it over.

Q. And checked it down so as to show that there was action taken by the board of directors declaring so much dividend and then you multiplied that—first, is there a dividend account?

A. Yes, sir, there is a dividend account in the bank.

Q. Did the dividend account agree with the minute book,—with the action taken by the directors, so far as you recall?

A. As to that I don't know. I think I went through the minute book not for the purpose of getting at the amount of dividend, or anything of that kind, but I read the minute book through to see when dividends were declared or ordered, but as to comparing the amounts, I didn't care anything about how much the directors had ordered to be paid; it was a question of how much the books showed.

Q. You would want to know, too, whether the dividend was authorized,—you did in fact do that, didn't you?

A. I think in certain cases I looked through just simply to satisfy myself whether there was action of the board in regard to that.

998 Q. I want to know if you found in the minute book of the meetings there, giving the proceedings of the board of directors at a time dividends were declared anything importing notice to any of the directors who were not the managing officers of the bank that any dividends were declared out of the capital of the bank, or out of any other source than net profits?

Mr. THOMAS: Plaintiffs object as not proper cross-examination.

Objection overruled.

Each of the plaintiffs excepts.

A. I don't recall that I examined the minute book with reference to that, and I don't recall anything now that would indicate anything of that kind.

(Adjournment until Thursday, February 9th, 1911, at p a. m.)

999

THURSDAY MORNING, Feb. 9th, 1911.

The WITNESS: Referring to the schedule of Director's paper in the bank I find that two notes of D. E. Thompson, that one July 9th, 1891 and the one on September 25th, 1891 that I had included, I find on looking at the ledger account that Mr. Thompson's paper had been taken out. I have taken that out of the schedule now.

Exhibit "AF" identified.

Q. Now in the schedule that you have prepared, and which I have had identified as Exhibit "af" you included during that whole period the indebtedness of Outcalt?

A. Yes, sir?

Q. You haven't checked up yet to see whether he was a director?

A. No.

Q. Did you look up to see whether he had ever qualified at any time as a director?

A. No, I haven't examined the record, Mr. Rose, on that point at all.

Q. Now the item in this schedule in red ink, under the heading "Report" is taken from a schedule on the back of the official report?

A. Yes, sir.

Q. And of course is not part of the published report?

A. No.

Q. The schedule in the report showed directors loans in excess of all the loans of directors other than Mosher and Outcalt, at all times, didn't it. If you exclude the loans which the books showed were outstanding to Mosher and Outcalt at the period of any report then the total of the loans scheduled on the back of the report would exceed in every instance those of all the other directors?

A. No.

Q. Show me one.

1000 A. The first one,—Mr. Outcalt has \$1,500. Deduct that from \$13,600 and you have \$12,114.50, and the report says \$10,600.

Q. I said the managing officers, Mosher and Outcalt.

A. Oh, yes, that's true.

Q. There was no period when any one of these defendants here, Yates, Hamer or Thompson attested any of these reports that they had personal loans which would import to them knowledge that the loans on the schedule was not stated correctly?

A. I don't know whether I know all of the reports that these three defendants attested.

Q. That would be true of all of the reports that are here.

A. I have not examined the records to see whether these three defendants attested any of these reports at the same time. I could look it up.

Mr. ROSE: I offer in evidence Exhibit "AF" as a part of the cross-examination of the witness.

Exhibit "AF" received in evidence (Copy on next page).

20—501

1002 Q. Neither Yates, nor Hamer had any loan at the bank at the time of any of these reports,—that is what your schedule shows as I understand it.

A. I think that is true.

Q. And the highest loan that Mr. Thompson had at any report period was \$5,000?

A. \$6,000 it was.

Q. Was there any ledger balance kept from day to day showing the footings of the paper of the Western Manufacturing Company carried in the bank?

A. No, sir.

Q. To ascertain the amount of that paper carried at any particular day, it was necessary for you to check over the bills receivable register and tabulate it and make up a ledger account giving the daily balance?

A. That is what I had to do. I will qualify my first answer Mr. Rose; I didn't appreciate the scope of it exactly. I will say that I found no book which contained the daily balance of any borrower. Now whether this bank kept what is called a loan register, or loan ledger I don't know. Most large banks keep what they call a loan ledger, which is really a ledger account, such as I made up here of these different borrowers.

Q. But you found no record of that kind?

A. At the time I examined the books of the Capital National Bank I found no such book.

Q. You found no trace of such a book having been in existence, and no reference to any such a ledger?

A. They wouldn't refer to the page. It is simply a book which is kept for the convenience of the officers of the bank, to know how much certain borrowers have at any time.

Q. And so far as you know no such record was kept by this bank?

1003 A. So far as I know no such record was kept by this bank.

Q. Now any notes of this character that were presented as a liability of the bank by holders after the bank failed would have to be ascertained,—that is their existence would have to be ascertained by reference to some source independent of the books of the bank, wouldn't it?

A. Well the existence of a note which was not upon the discount register of the bank, and which they had endorsed and become liable upon as a rediscount, or in any other way, of course would have to be shown by the note itself, but the liability of the bank upon that note would be evidenced—

Q. But what I am getting at is, that fact couldn't be ascertained by an examination of the books so long as the note itself was outstanding, that is what I am getting at. You referred to some of those notes being in existence, and I wanted to know what opportunity there would be for discovering those from an examination of the books, while the note itself was outstanding.

A. There is no way of discovering any rediscounts which have not passed through the discount register of the bank.

Q. Now from December 24th, 1889 to December 24th or 28th, 1892, whichever the date was, did you find a general balance book in balance?

A. I think so. I don't think I footed it on every day for that length of time.

Q. So far as your examinations have extended you found it in balance, unless there was a variance of a trivial sum?

A. Yes sir, but I don't recall any variance in the footings put down. Of course I didn't foot the general balance book every day during that time.

Q. Then the error in the footing of the deposit ledger, that proceeded during that entire period was not shown in the ledger balances that had been transferred to the general balance book?

1004 A. Well in the matter of the deposits the ledger balances are not transferred only as the total of the three books that they had. You see they had an individual book from "A" to "K", and that was numbered "1"; No. 2 was from "K" to "Z", and then a third book in which was kept the accounts with their country banks. Now the totals of those three books were added together, and from the aggregate was deducted the amount of all the overdrafts on the three deposit ledgers and that result was then entered upon the general balance book as the net amount of deposits for which the bank was liable.

Q. But entered in such form as to preserve the balances in the general balance book?

A. Well it was entered as correct I think in all cases except one,—that is the correct amount taking the computation—the figures that they had on these three books.

Q. Yes, but it was that footing in the deposit ledger that was erroneous?

A. They used an erroneous footing in making up the net amount of deposits.

Q. Of course the deduction of the overdrafts from the total footing would not tend to disturb the balances in any way?

A. No sir.

Q. It would simply reduce both the resources and liabilities in the amount represented by the overdrafts.

A. Yes, sir.

Q. And that would preserve the balances as the items went over into the general balance book.

A. Yes, sir.

Q. Now,—there are a number of leaves or sheets, of course in these balance books?

A. Yes, sir.

Q. And this persistent error in footing, while it continued
1005 every day, it wasn't in the same form, or on the same leaf every day?

A. No.

Q. Some days in footing the leaf where the \$100,000 item was dropped,—the footing of that particular leaf would be false.

A. Sometimes the footing of that—

Q. That is, if there had been an item of \$100,000 on the page it would be simply dropped in the footing and not reflected in the footing of the page,—is that correct?

A. No. There were no deposits after that time, as I recall, of \$100,000 on any one day. What they did was simply to drop at \$100,000 in the footing of that particular column.

Q. Then another day the column would be correctly footed and the \$100,000 would be dropped in transferring the footing of that leaf to the next succeeding leaf?

A. Yes, sir.

Q. And it would be transposed,—the dropping of the \$100,000 would be done sometimes in one leaf and sometimes in another?

A. Yes, sir.

Q. But the figures which reflected the total balances of the particular deposit ledger for each day would, with the explanation you have made of the footing being changed, by taking the difference between the footings of overdrafts and deposits, would be the ones that were correctly carried over to the general balance book?

A. Yes sir, except in one instance. I discovered that on July 9th, 1891 there is a discrepancy of \$1.54. I don't know how it arose, but taking the deposits on the balance books and making a computation they have \$1.54 more in their net deposits than they should have.

1006 Q. Evidently had not been checked back.

A. I don't know how it comes, but it's there. I have not gone through to see where the mistake occurred.

Q. That is such a mistake as would not be uncommon, except that it might be uncommon in that it hadn't been checked out and finally corrected.

A. Yes, sir.

Q. That deposit ledger is the most voluminous account in the bank,—that is it is checked and balanced every day, isn't it?

A. Yes sir.

Q. And do you attach any significance to the fact that the dropping of the \$100,000 is shifted from one place to another in that ledger, and that the system by which it is done is changed from one day to another during all that period?

A. Well I think the explanation would be that they desired to conceal it as much as possible, that is, to avoid discovery.

Q. Now what significance do you attach to the fact that when on December, 1892, the correct balance or footings of the individual deposit accounts were restored, that notes of Mosher and Outcalt appear to have entered the bank, without anyone taking credit for them?

A. Well I—

Q. I speak of the notes,—I treated them all as notes, because in the instance of the notes that were credited to Mosher and Outcalt the balance of that credit seems to have been appropriated by their joint check.

A. It seems to me that those entries you speak of were made for

the purpose of enabling the deposit ledger and the General balance book to be made to agree.

Q. And the fact that the two managing officers of the bank assumed personal liability for the whole discrepancy of \$100,000 would furnish some indication that they probably received originally the fruits of the falsification, or they wouldn't have assumed the liability,—was that your inference?

A. One would naturally assume that they were the persons who knew about it, and were responsible for the discrepancy in the first place.

Q. And that is the real significance of the appearance of their paper in that form for \$100,000 in December, 1892?

A. I think so. Of course it would not follow, Mr. Rose, that they had taken out \$100,000 of money. They may have used it to conceal losses in different ways that were apparently existing in the bank at that time, and they may have gotten the money, and someone else may have gotten the money.

Q. They may have had a Prison contract, or a state treasurer to elect, or something of that kind.

A. They may have had a Western Manufacturing company to float.

Q. But their responsibility seems to be indicated; that is all you claim for it; their responsibility for the discrepancy seems to be indicated by the fact that they became personally liable for the whole amount?

A. Well they seem to have known all about it, and one would infer that they were, or thought they were responsible at least.

Q. Referring now to certificate of deposit No. 24452 for \$100,250. The face of that certificate was charged to the certificate of deposit account, was it, April 28th, 1891?

A. Credited I think, Mr. Rose.

Q. I thought they called a withdrawal,—

A. When they issue a certificate they credit. It is the same as a deposit.

1008 Q. It was paid, as I understand, April 28th, 1892, and therefore charged as a withdrawal?

A. It was issued April 25th, 1891.

Q. And marked paid April 28th, 1891?

A. On the register, yes sir.

Q. And what was the entry—I understood it was on the ledger too,—that is, there was a charge to the certificates of deposit on the ledger of April 28th, 1891, wasn't there?

A. I think not, not for that amount.

Q. Well when was certificate No. 24473 issued?

A. Yes sir, that is right, Mr. Rose,—April 28th, 1891, for that amount.

Q. That amount was charged to the certificate of deposit account?

A. Yes, sir.

Q. And a new certificate then issued to C. W. Mosher for \$75,000?

A. That is true, Mr. Rose.

Q. Now those two entries read together then, without reference to other entries would import that \$25,000 in cash was withdrawn on account of that certificate from the funds of the bank, or from the deposit funds of the bank?

A. Well it would indicate that that certificate for that amount was paid.

Q. \$75,000 of it was left still on deposit however, evidenced by the new certificate?

A. A certificate for \$100,250 was paid on that day and a certificate for \$75,000 was issued.

Q. Well you construed those two entries together, as I understood you?

A. Yes, sir.

1009 Q. Now the new certificate would account for the disposition of \$75,000 of the funds withdrawn wouldn't it?

A. Yes sir, if it was issued to the same person, or if it was in connection with the \$100,250 certificate.

Q. Your inference was, if I understood you correctly, that the two items were related.

A. I thought so.

Q. Now that would leave of the cash paid out \$25,250 unaccounted for, would it not?

A. Yes, sir.

Q. Then the two credits of \$10,000 to C. W. Mosher's personal account and of \$15,000 to Prison Contract would lack \$250 of accounting for the discrepancy between the face of those certificates?

A. Yes, sir.

Q. Have you accounted for any entry for that \$250?

A. No sir.

Q. The book entries apart from the credit items that you have referred to would simply import that \$25,250 had been withdrawn from the deposit account of the bank?

A. Yes, sir.

Q. You couldn't absolutely verify the conclusion that the proceeds of that certificate not accounted for by the \$75,000 item were the two items of Prison Contract and the deposit to Mosher, could you?

A. No sir.

Q. Those things we work out by inference, and by tracing what would be the natural conclusion of all of the related entries?

A. Yes, sir.

Q. And they are subject to be altered or changed by collateral inquiry in any case as to the integrity of any one of the items which you have had in connection with them.

A. Yes sir.

1010 Q. You have had no opportunity to follow out any collateral inquiry in this case as to whether the Prison Contract credit of \$15,000 was really a bona fide credit?

A. No sir.

Q. Now omitting some of the intervening items in that particular schedule, you have undertaken to follow out some transac-

tions until the \$100,250 seems to be entirely consumed. April 30th, was the period when one of the certificates of that series was surrendered and a new certificate issued, wasn't it?

A. Yes sir.

Q. And the new certificate on that day was for \$62,500?

A. Yes, sir.

Q. And the \$75,000 certificate,—the item of \$75,000 was charged against the certificate of deposit account that day?

A. Yes, sir.

Q. So that you infer that \$12,500 was withdrawn on account of that transaction?

A. Yes, sir.

Q. Now in connection with that entry you mentioned that Mosher and Outcalt, the same day, took credit for \$2500, and that R. C. Outcalt's account as treasurer took credit for \$10,000.

A. Yes, sir.

Q. Those two items would represent the exact amount of the difference between the old and the new certificates?

A. Yes sir.

Q. Now have you made any collateral inquiry to check out the integrity of the credit item to R. C. Outcalt, treasurer?

A. No, sir.

Q. Do you know whether that was his personal account or not?

A. It was R. C. Outcalt, treasurer.

Q. That was the account of the Lincoln Gas Company, so understood?

1011 A. I don't know whether it was or not; I have heard it stated so.

Q. The title of the account imports that it wasn't a personal account?

A. Yes, sir.

Q. Do you know whether or not the Gas Company on that day made a bona fide deposit of that sum?

A. I do not.

Q. And you have had no means of running that out, or checking it so as to ascertain with any definiteness whether the credit to Outcalt, treasurer was a bona fide credit or not?

A. I have no way of determining it, I have not seen the pass books of the gas company that was in use at that time; if I had that I could probably determine it.

Q. And you haven't seen the journal or the ledgers of the gas company kept at that time by Mr. J. K. Honeywell?

A. No sir, I have not seen the ledgers or journals of the gas company.

Q. And you have had no opportunity to make an effort to reconcile the two accounts?

A. No sir.

Q. Or to see whether their journal reflected any transaction that would place \$10,000 to their credit on that date in the Capital National Bank?

A. I have not.

Q. Now the last payment which would cover the balance of that certificate was charged to the certificate of deposit account as \$24,570.00 wasn't it?

A. No sir.

Q. What was it?

A. \$12,500,—well the last item was the payment of the certificate for \$7,500, for which there is no corresponding entry.

1012 Q. You couldn't find any counter balancing entry for that?

A. No sir.

Q. So that the last payment imports merely the paying of so much cash?

A. Simply imports the payment of the certificate in some way.

Q. Now referring to the Donnell, Lawson & Simpson notes. There were entries soon after the organization of the Capital National Bank mentioned in your schedule, which purported to take that item of assets out of the bank entirely?

A. At the organization?

Q. After the organization,—(former question repeated).

A. Yes sir, there were entries which charged the amount up to, or a part of the amount to other banks, and they were disposed of

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in various ways. In May, 1894 the Chemical National Bank was charged with \$10,000. May 26th, the Commercial National Bank was charged with \$10,000. May 27th the account of Donnell, Lawson & Simpson was credited to balance the account \$8,174.70, but that didn't actually balance the account at that time; there were some entries made apparently of drafts that had been returned, and remittances that had been charged,—diverted after the failure of Donnell, Lawson & Simpson, that were made after this entry of \$8174.70, but that seems to be taken in connection with these others,—it seemed to balance the account.

Q. And the import of that entry, if it stood alone would be to show the payment of that balance of Donnell, Lawson & Simpson?

A. Yes sir, in some way.

Q. That was in 1884?

A. Yes, sir.

Q. And the name of the Marsh National Bank was
1013 changed to the Capital National Bank in May, 1884?

A. I think they made the change on the books June 1st.

Q. But that reorganization was in process in that very month of May?

A. Well the Act of Congress was passed sometime about that time, authorizing them to change the name from Marsh National to the Capital National. I don't understand that there was any reorganization.

Q. Well there was a reorganization in this sense, that the concern was localized by increasing the stock and taking in local citizens?

A. Well they increased the capital, that is, the capital of the Capital National Bank, that is when the name was changed on June

1st was \$100,000, and that increase was put in as an asset due from stockholders, \$100,000, and some premium.

Q. Well call that a change, whether it is technically so or not; that is what I refer to. Now the Marsh notes disappeared to, didn't they as assets?

A. No sir.

Q. Not at any time?

A. I don't think they did.

Q. There were large credits made on account of those notes weren't there?

A. There were debit and credit entries made in regard to those notes, but I don't think there was a time from the organization of the Marsh National Bank down to the close of the Capital National Bank that the Marsh paper was not in the bank to a greater or less extent.

Q. Well now you take the notes of F. S. Johnson & Company, The First National Bank of Kearney, and the First National Bank of Hastings, the book entries import that the Capital National Bank had those particular assets, did they?

1014 A. Yes sir, entries were made on the discount register that indicated that notes of those particular institutions and individuals were carried.

Q. And if you had examined the books you would have found entries indicating that those were assets of the bank?

A. Yes, sir.

Q. What do you figure was the counter balancing entry to that. What did you conclude was the counter balancing entry to that?

A. At the time those notes went in?

Q. Yes, sir.

A. At the time those notes went in Bills of Exchange were credited on the 20th of July, with \$19,968.00, and on the 29th of July Bills of Exchange were credited with \$10,000, which made \$29,968, which was the amount of those three notes.

Q. Now that imported that those Bills of Exchange had been converted into cash or some other form of asset?

A. Yes sir, it imported that they had been in some way taken out of the account.

Q. Now in finally reconciling the accounts and testing out the integrity of these items recourse would have to be had to the records of the other banks, wouldn't it?

A. Not, necessarily, no sir.

Q. That is one source of inquiry isn't it?

A. It would be if those notes were marked paid on the books of the Capital National Bank.

Q. Or it might be necessary also, if the books purported to have disposed of them as a rediscount somewhere?

A. Yes sir, if the books had shown that they were disposed of as rediscounts.

Q. At any time when the notes were not actually in the bank's possession it would be necessary to have recourse to some outside information to check the integrity of the items?

1015 A. Yes, sir.

Q. And where items were charged to the Chemical National Bank, if they were connected with any of those assets which you have now concluded were losses prior to the change of the name of the Capital National Bank, you would have to reconcile the books of that bank and test out the correctness of the books of account of both banks?

A. Not necessarily, no.

Q. That would be the usual way of doing it?

A. No, the Chemical National Bank furnished the Capital National Bank each month with a statement of account; the Capital National Bank was drawing drafts on the Chemical National, it was a reserve agent; at the end of each month the Chemical National Bank would make up its account with the Capital National Bank and would send to the Capital National Bank all of these cancelled vouchers that had been received up to that time. Now each day the Chemical National Bank sends a letter, or whenever it is necessary, sends a letter to the Capital National Bank, advising them of the receipt of remittances to the credit of the items as they are received, or as they are credited. For instance, the Capital National Bank sends a letter of remittance to the Chemical National Bank today and encloses a number of items of various kinds; those are listed in the letter. The Chemical National receives that letter with those items of remittance; it checks them over; those that it accepts it credits to the account of the Capital National Bank on its books, and those it refuses it may return with a letter of advice to that effect, or if there are some items that they do not treat as cash items, but give credit upon presentation and payment, they will hold them until they are collected and then give credit, but it always advises the Capital National Bank of its action on all those matters. Now all these letters are in the hand

1016 of the Capital National Bank, together with the statements, at the first of the month.

Q. But that correspondence passes, of course, immediately between the executive officers of the two banks, whoever has charge of it at the Capital National, as executive officer, or remittance clerk.

A. Well the communications pass between the banks as banks; they may be handled by different individuals.

Q. But the business of the bank of course is done by certain officers, who are active in the management?

A. Usually the mail of a bank goes to one individual, in a large bank, who opens it and who distributes it, unless—that is he opens all of it, unless they have specially addressed envelopes which have been sent to correspondents, and which are used for a particular purpose, and then those envelopes with the enclosures go to the particular officers who have charge of that department, after being opened by the cashier, or by some assistant cashier, or the person who is charged with the duty of examining the mail.

Q. Now then in this particular case, you in fact have examined what purports to be exhibits of the ledgers of both the Chemical National Bank and the Capital National Bank?

A. For certain months, yes sir.

Q. And you have had the benefit of depositions taken in these cases made by officers of the First National Bank of Hastings, and the First National Bank of Kearney?

A. No sir.

Q. Depositions of witnesses?

A. Mr. Clark was a witness here from the First National of Hastings, and I think there has been no witness or deposition from the First National of Kearney.

Q. But you have had the benefit of some outside information?

1017 Q. (continued). Information outside of the books to aid and reinforce your conclusions in those cases?

A. No sir, I have not based anything upon anything outside except the copies of the books of the Chemical National Bank that are in evidence here. I don't think they refer to this particular transaction. If you are speaking of these three notes I have not based anything upon the information or testimony of any witnesses. I have examined the ledger of the First National Bank of Kearney for this period.

Q. You have?

A. Yes, sir.

Q. And of course an examination of this character it is really very important to follow any collateral lead that would lead to a verification or exposure of any particular item by rather definite and conclusive proof?

A. Oh I would want to pursue all of the avenues of information, of course. If I could have had access to the correspondence of the Capital National Bank why I could have verified, probably, every one of these definitely, and if I had the remittance register of the Capital National Bank I could verify a great many of these charges that were made against these other banks.

Q. That remittance ledger was left there, as I understand it, wasn't it?

A. I never saw the remittance register of the Capital National Bank; of course that remittance register is supposed to have upon it every item of remittance that is made by the bank to its correspondents; I couldn't find that register; when I looked in 1902 I couldn't find the remittance register, and the same is true of that account called the Bills of Exchange.

Q. Now when you were called in here to make this examination you found a rather complete examination had been made by or under Mr. Jones' direction before you were called in, didn't you?

A. I don't know how much of an examination had been made by Mr. Jones, or under his direction.

Q. But primarily you were called to check over items that he had discovered, and to give your own conclusions of those?

A. Well he knew about a good many matters that he had called to me attention at that time. Now how he acquired his information I am not advised.

Q. Of course you got the benefit of his knowledge?

A. No, I got the benefit of what he told me; whether he told me all he knew or not, I don't know of course.

Q. Well I mean his knowledge of those things.

A. Yes, sir.

Q. And you had that lead to start on?

A. Yes, sir.

Q. So you didn't have to take books and go through them without your suspicions aroused, or without being directed to any item?

A. He found a good many of these things, yes sir.

Q. Now you have spent a good deal of time over these books haven't you?

A. Oh I have worked on the books at different times quite a good deal.

Q. You have *septa* some weeks or some months on them?

A. Well I gave it on the other trial,—I think I put in all together during the trial and before that time what I called about thirty days.

Q. And how long this trial?

A. And during this trial, I have worked here, let's see—counting this week I think about 12 days,—that is, what I have been charging Mr. Jones for.

1019-1022 Q. You haven't charged him extra for night work and the like of that?

A. No.

Q. Now it would take three or four days to make up a ledger account of the Western Manufacturing Company's paper, wouldn't it?

A. Well the ledger account of the Western Manufacturing Company paper I made at the time of the other trial, and I rechecked it and had it copied.

Q. Well it took three or four days originally to make that?

A. Well it took sometime to go through the discount register as I had to in order to get the notes, but I did it in connection with other work; as I went through the registers why I would list the Western Manufacturing Company paper and other paper.

Q. But that was a big job in itself?

A. Oh, it is in the manner in which the books are kept.

Q. Bookkeeping is somewhat of a science,—something of an attainment in and of itself?

A. Yes sir.

Q. Auditing is a profession?

A. It is.

Mr. ROSE: I think that is all.

* * * * *

1023 Q. Now, Mr. Whitmore, speaking of the footings while the books were out of balance. The question was asked you if these changes in the footings were shifted around from day to day. Now is it not true that in a great many cases the error remained in the same place for months at a time?

A. Oh, they would for quite a number of days, the change would be made in the same place, and on the same page, it would be just succeeding columns; the footing would be just \$100,000 less than it should be at the bottom of the page; that might run along for some time, and then they would shift that to some other page, or would enter the correct footing at the bottom of the page and carry the total forward to the next page at \$100,000 less than it should be.

Q. And in referring to certificate of deposit No. 24452 for \$100,-250 you were asked in regard to the entry of the day that that was marked paid, I think it was April 28th, 1891, in which it appeared that the entries that you accounted for were only \$100,000, and lacked \$250., of accounting for that certificate. Now at the time that certificate appears to have been issued for \$100,250., did you testify that the books indicated a certificate of \$100,000 as having been paid at that time?

A. I think there were two certificates,—no, one for \$100,000 indicated on the books as having been paid.

Q. Isn't that difference of 250 on that date,—isn't that accounted for on the day that the certificate for \$100,250 is cancelled and marked paid?

A. I don't know whether it is or not. They might have received \$250 in money when that was issued.

Q. That is, it might indicate that there was paid into the bank \$250 when it was issued and they deducted \$250 when it was paid?

1024 Q. So it practically balanced.

A. Yes sir. Of course I don't know what the actual cash in the bank was; I haven't had access to the teller's cash book.

Q. Now, Mr. Whitmore, I think there was something asked about—in a part of your examination several days ago—if you had attempted to reconcile any of these reports with the statements, or the balance books with the published reports. If you had made any effort to ascertain how those published reports were made up?

A. Such a question was asked me.

Q. Did you last night take any of the reports and try to figure out how they arrived at the published statement from the figures as shown by the balance book?

A. Yes sir, I made some attempt to reconcile, as they call it, what Mr. Rose would please to call a reconciliation,—I don't call it a reconciliation.

Q. What report did you take?

A. I took the report of July 9th, 1891.

Q. Have you made a sort of a schedule of that?

A. Yes, sir.

Q. And is that your theory of how that was made up?

A. Yes, sir.

The COURT: This was the particular schedule that Mr. Thompson signed, was it not?

A. Yes sir.

Q. Have that schedule identified by the reporter.

(Schedule so identified, as Exhibit "AG.")

Q. Is Exhibit "AG" the schedule in which you have attempted to reconcile or figure out how the purported published report of July 9th, 1891 was made up from the books?

A. Yes, sir.

Q. Explain that schedule, Mr. Whitmore, and show by what process you have reached the conclusion you have?

1025 A. Sheet No. 1, is intended to show the assets at the close of business July 9th, 1891; the first column shows the figures and is headed General Balance book figures; it gives the figures as shown on the General Balance book of the assets, with the total as shown on the General Balance book; following that I have made up a statement from the General Balance book and the deposit ledgers, both individual and bank showing the amounts of the several assets as they would be with the individual overdrafts and the amounts due from banks,—that is the bank overdrafts, shown with the total. Then I have shown the published figures as taken from the published statement which is in the record. Then I show the published figures, where they exceed the figures shown by the books, and then where the published figures are less than shown by the books I indicate in another column, and then in the last column the items that are unaccounted for,—as I say, are indicated. The totals are given in each column, and in the last column I have totaled those items and then added the totals in the preceding column of the amounts that were published less than as shown by the books, and that total agrees with the total as shown in the third column from the last of the amounts that were published more than as shown by the books. Now this would show the loans as published \$96,230.60 more than as shown by the books; the amount due from reserve agents is \$50,000 more than as shown by the books, making a total of \$165,765.71 more assets
1026 shown in these three accounts than are shown by the books,—this includes also the item of amount due from other National Banks which is \$19,535.11 more than as shown by the books.

Then in the next column the amount of overdrafts is \$40,000 less than shown by the books; the amount of stocks, securities, claims, etc., is \$50,000 less than as shown by the books; the amount due from other state banks is \$7202.36 less than is shown by the books; making a total of \$97,402.36 less shown in the published statement than the books show. The items that I have not accounted for are Bills of Exchange \$9332.75; Real Estate \$53,230.60 and Walsh and Putnam \$2,800.—making a total of \$68,363.35. Add this to the amount that is shown more than published makes \$165,765.71, which is just the amount of the excess in the publication, that is, that the published statement shows more than the books. In other words the amount shown less than the books equalizes the amount shown more than the books, when you add these three unaccounted items.

Now the stocks and securities is \$50,000 less than the books show. The amount due from reserve agents if just \$50,000 more than

the books show, so that it would appear they had taken \$50,000 off of stocks and securities and added it to the amount due from reserve agents, and the amounts due from reserve agents are all of them wrong as shown by the General Balance ledger and as shown by the ledger of the bank. The amount of overdrafts is \$40,000 less than shown by the books; adding that to the \$56,230.60 of real estate, makes \$96,230.60, which is just the amount that the loans and discounts as published exceed the loans and discounts as shown on the books.

The amount due from other National banks is \$19,535.11 more than the books show. Adding the \$7402.36 deducted from
 1027 Due from state banks, and the amount of Bills of Exchange \$9332.75, and the account known as Walsh and Putnam, \$2800., we get the amount that the Due from other National Banks exceeds the books \$19,535.11.

Now it would appear that they had shifted these accounts in that way in order to arrive at the figures in the published statement of assets.

On Sheet No. 2 I have shown the liabilities of the bank. First the general balance book figures; second the general balances with the figures from the deposit ledger, giving the total of individual deposits subject to check, the total certificates of deposit, and the amounts due to banks, and the amount of rediscounts, being all the items they have.

These would be the correct figures taken from the books. The amounts of undivided profits, and discount, interest and exchange.— those two items are bunched in the published report, \$17,384.87, which is correct.

Q. The deposits shown in the published report are \$367,258.70, which is \$1.54 more than I get the deposits on the deposit ledger. There seems to be a difference there but I have not attempted to reconcile it; I have not had time in fact.

Mr. ROSE: Look at the total of the deposit account in the deposit ledger; I think you will find the difference there, and it was carried over at that difference.

A. Well there is a difference between the individual ledgers and the general balance book; in making the computation of the overdrafts they got the wrong amount in some way.

Mr. ROSE: Well you will find that it is just carried over \$1.54 long.

A. Yes but their books wouldn't balance if they took the \$1.54 off, the general balance book would be out of balance then.

Q. Then the general balance book is simply forced to make up that \$1.54?

1028 A. Well it looks like they hadn't found it; I don't know how it was. Now the certificates of deposit shown by the books are \$90,257.34; the published figures are \$139,199.07 which is \$48,941.73 more than the books show. The amount due from National banks is \$3999.39 less than the books. They have taken the amount from the balance book,—the bank ledger of balances and have put this in the published report, and ther- is an item of

\$3999.39 due to the First National Bank of Beatrice that is on their general balance book and on their general ledger which is not included in the amount due to other National Banks, so that it makes the amount due to other National Banks \$3999.39 less than the books show.

The amount due to state banks as published is the amount shown on the bank balance book of these country banks as they call them, but on the general ledger itself there is an amount of \$36.32 due to the Bank of Cass County, which is not included in this total in the published statement. That \$36.32 I have put in the column which is less than the books show. The total published more than the books show \$48,941.73, does not include this \$1.54.

Items that are not shown in the published statement and which I say are unaccounted for are the amount due to reserve agents. The General Ledger showed at that time that they were overdrawn with the Chemical National Bank \$27,672.60; the American Exchange National Bank, \$4109.81; the Commercial National Bank, \$13,123.61; making a total of \$44,906.02 that they owed their reserve agents the day that this report was made up.

Q. That amount was not shown on the report?

A. No sir. Now adding that amount to the total of those items that were less than the published report, we get \$48,941.73 which makes the amounts as shown published more than the books agree with the amounts less than the books, counting this \$44,906.02 as being less than the books show.

1029 Now the report shows that they took the amount due to the Chemical National Bank and put it in as amount due to them,—simply reversed it and made it amount due from the Chemical National Bank, instead of the amount due to the Chemical National Bank, \$27,672.60; the amount due to the American Exchange National Bank was changed into amount due from the American Exchange National Bank \$4,109.81; the amount due to the Commercial National Bank was changed to amount due from the Commercial National Bank,—they simply reversed those three entries,—making the amount due from the Commercial National \$13,123.61, and then they added an amount to the amount due from the U. S. National, which made the U. S. National instead of owing them \$1984.76, it owed them \$7079.74.

Q. Now you may state, Mr. Whitmore what effect that would have as to the reserve, the amount on deposit with the reserve agents, that is, the difference between what the books themselves show and what the published report showed?

A. The amount of legal reserve in the bank when the published statement was made up showed better than it was as shown by the general balance book. In fact it gave them a good legal reserve, while the figures as shown by the general balance book indicated that they had much less than the legal reserve.

Q. Do you mean to say that the balance book itself from which this report was presumably made showed that the legal reserve was considerably under the required amount, whereas the report as

published showed that they had more than the amount of legal reserve required by law,—is that what you mean to say?

1030 Q. Explain more fully, Mr. Whitmore, what you mean by that.

A. National banks are required to keep fifteen per cent of their deposits as a legal reserve.

Q. What does that mean,—that is in cash in reserve banks?

A. They are permitted to carry a certain amount of it in what are known as reserve agents; amounts due from approved reserve agents, and then a certain amount of it in legal tender or in certain species of actual money, which would be specie, gold and silver and legal tender notes. In computing the amount of reserve—

Mr. ROSE: Let me ask you whether those specific things are provided for by statute?

A. Yes sir.

Q. Have you given every item that could be counted as legal reserve?

A. I have given the item in this published statement that would be counted as legal reserve. I was going to explain that the bills of other national banks are not used as a part of the legal reserve, but in getting at the amount upon which they must compute the legal reserve, the amounts of bills of other national banks, and exchanges for clearing house, checks on other banks in the same city are permitted to be deducted from the total of deposits.

1031 Q. By that you mean total deposits of smaller banks.

A. No, those are deducted from the total deposits. Now the amount due from other national banks and other state banks and bankers is permitted to be deducted from the amount due to other national banks and state banks and bankers.

Q. But not from the general deposits?

A. Not from the general deposits. In other words, if they have nothing due to other banks then they couldn't deduct the amount due from banks from their deposits. They can only use what is in their approved reserve agents, and then they may deduct bills of other national banks and exchanges for the clearing house and things of that kind in the town. Getting at the legal reserve, of course you get that from their report of the condition to the Comptroller, or the published statement, but the general balance book simply shows the balance of cash which would be the total of cash that they had; the teller's cash book, however, separates the cash, as a rule, into the different classifications, so that they may arrive at the amount of reserve money that they have.

Q. Mr. Whitmore, schedule "AG" is the one which you have referred to, and concerning which you have been testifying as giving your theory of how the published report of July 9th, 1891 was arrived at?

A. Yes, sir.

Mr. THOMAS: We offer schedule "AG" in evidence.
Exhibit "AG" received in evidence.

1032 (Here follow sheets 1 and 2, Exhibit "AG," appearing at page 1032.)

CHARTS

TOO

LARGE

FOR

FILMING



1033 Q. Mr. Whitmore, in referring to the amount of time you had spent in these matters, did that include the time you were on the witness stand at the prior trial, and at this trial?

A. Yes, sir.

Mr. THOMAS: I think that is all.

Recross-examination.

By Mr. ROSE:

Q. Did you say that acts of Congress did not permit the redemption fund deposited with the United States treasurer to be counted as a part of the bank's legal reserve?

A. I did not.

Q. Does it?

A. The- use that in computing their reserve.

Q. That is an item that you omitted. Did you foot up the items that the bank might justly count as its legal reserve including the item of \$600 on deposit with the United States treasurer at the time of this report?

A. I did not make any computation, except just to look at it.

Q. I understood you to say that you found it was not equal to fifteen per cent of its deposits after making appropriate deductions from the deposits of the banks?

A. The actual condition there, I said; I didn't say the published report.

Q. How could you confirm that if you haven't figured it out to ascertain what, under this particular report here, the 15% would amount to?

A. I didn't figure it out, I just run it over in my head and I could see that it was less.

Q. Well how much less?

A. Let me see that schedule.

1034 Q. Did you figure out what amount of deposits the 15% would have to be calculated on?

A. Yes, sir.

Q. What is the amount?

A. I think it is about \$565,000.

Q. Did you figure out the amount that they had for reserve?

A. They had two items in their cash,—they had \$45,000 in round numbers, and about \$2,000 in round numbers due from reserve agents, would make about \$47,000.

Q. And \$600 on deposit with the United States treasurer, redemption fund?

A. Ten per cent of their deposits would be about,—something like \$54,000, and then you add one-half of that, would make about \$79,000 was the amount of their legal reserve, and they had about \$47,000.

Q. They had in excess of \$47,000?

A. They might have had a little bit more, but about that.

Q. Now in respect to the sums due from the Chemical National Bank and other banks that were not otherwise shown in the report,

you figured it, as I recall \$48,941.73. That was shown as a liability in the report, wasn't it,—in the item of deposits?

A. They showed the liabilities of due to other national banks, which was the amount of the total balances due to national banks on their individual bank balance book, then they showed the amount that was due to state banks and bankers which was the total of balances on the individual bank balance books, but they did not show the amounts that was due to the three reserve agents.

Q. Yes but they figured that as a liability in their general statement by increasing the amount of their deposits that much, didn't they?

1035 A. Why they increased the amount of their certificates of deposit the amount of those three items, due to reserve agents.

Q. So that a like sum was reflected in the report as a liability,—the total footings of liabilities were sufficient to include those items?

A. Certainly.

Mr. ROSE: I would like to recall the witness for cross-examination on another matter.

Q. Now have you since I asked you about the report of December 29th, 1886 undertaken to ascertain how that report was made up?

A. No, I have made no schedule.

Q. You have made no schedule, but have you run it down so you could analyze that for us?

A. I think I run down one of them, but I don't remember whether it was that report of '86 or not. Mr. Mullen and I were talking about one of them.

Q. How did you happen to pick the one of July, 1891?

A. I was requested to take that one.

Q. You did check over a number of them, that's the truth of it, isn't it?

A. I think I went over them hurriedly but I didn't make a schedule such as I have made here, but I can if you want; I can make a schedule for each of these reports.

Q. I don't want to bother you, but as a part of your cross-examination it was my judgment that the correct examination of an expert should show how each report was made up.

A. I want you to understand me as saying that the probabilities are that if I could take time enough I could probably show how they had taken from one account and added it to another account and made up the balances in that way, but what I want you to understand is this: that it simply shows that they have juggled

1036 all of the accounts,—that is, they have juggled the accounts in every instance when they have made up these statements, unless they have taken the wrong day for making up the report, and that I say was just as much a juggling as to change the figures from one account to another.

Q. Well it might merely have been an inadvertance on their part.

A. It might have been and it might not have been.

Q. And you couldn't tell that without seeing whether there was

any material change in any of the sensitive items of the accounts or not, and as I understand you, you haven't checked that out.

A. No, but they simply haven't published the statements in accordance with the facts; I think that is true of every report.

By Mr. THOMAS:

Q. Could you prepare sheets and schedules for all of the reports similar to this one, if the other parties want it?

A. I think I could; I don't know. It might be that they have taken part of an account in one instance and added—that is they have taken the difference between what they published and what the books show and added that to some other account,—or part of it to one account and part of it to another, and in that case I wouldn't be able to determine unless I would go through and figure it out and spend time on it. Then I would have to have all the balance books here.

Q. Now I am going to ask you, Mr. Whitmore, to refer to the balance book entries, and to the deposit ledger, as far as you need to, and to the report. I want to ask you first if in carrying the balance book entries into the reports, the items of Interest Paid, and Undivided Profits, were not bunched as you expressed it?

1037 A. Well in that report of December 29th, 1886,—Exhibit X-1039 they seem to have added the undivided profits and the Discount, Interest and Exchange together which made \$36,-654.28 then deducted the interest paid \$8,214.90 which left \$28,-439.38 as undivided profits in the report.

By Mr. ROSE:

Q. Now that process of course wouldn't in fact misrepresent the condition of the books of the bank, would it, of itself?

A. Not if they published the remainder of the expense items on the other side.

The COURT: What expense items on the other side were omitted, Mr. Whitmore?

Q. In this case were the current expenses,—expense items and taxes paid, published?

A. \$8,885.65 is the totals of wages and expenses.

Q. Correctly published in the report is it?

A. They're in the report of the condition—let me have the report as published. Yes, it is correctly published in the statement.

Q. Does the report over-state the items of cash, or reserve, if you have ascertained that?

A. I didn't compare the cash,—made no statement about the cash. The cash is \$55,378.44. Now what was the published—the cash is divided up on this. Well it seems to be about the same; I haven't footed it exactly. The amount of cash agrees with the balance book.

Q. Does the amount due from reserve agents agree?

A. Yes sir, the amount due from reserve agents agrees.

Q. Then in respect to this report there was no misrepresentation of the bank's reserve, that is compared with the face of the balance book,—comparing the report with the face of the balance books?

A. The amount due from reserve agents and the amount of cash as stated in the report agrees with the balance book.

1038 Q. The discrepancy in the amount of loans and discounts is made up of the ledger balance of Walsh and Putnam, that has been discussed here, isn't it?

A. The ledger shows \$11,600 due from Walsh and Putnam, and I had a difference of \$11,400.

Q. Suppose you check that over again and see if the ledger balance isn't exactly that amount.

A. No, there is \$200 difference there that is not accounted for.

Mr. ROSE: That is all.

Mr. THOMAS: I want to offer in evidence the following portion of Exhibit X-26 being the By-Laws of the Marsh National Bank and the Capital National Bank, as is shown at the top of page 11 of the exhibit; I offer paragraphs 14 and 17., and I further offer all the minutes of the stockholders and directors' meetings held during the existence of the bank beginning at page 25 and extending to and including all the intermediate pages up to and including page 69.

Mr. ROSE: Each of the defendants objects as immaterial and irrelevant, and so far as pages 68 and 69 they are objected to as incompetent, and not proven.

Objection overruled.

Each of the defendants excepts.

The evidence offered is received, and copy follows:

1039 (*Copy of Paragraph- Offered in Evidence.*)

14. The Board of Directors of this bank shall hold regular meetings at the banking house for the transaction of business on the

Amended Jan. 10/88.

second Tuesday of the months of January, and July [and October.]* The Board may also hold special meetings upon the call of the President, Cashier, or any three or more members, and whenever there shall not be a quorum at a regular or special meeting the members present may adjourn the meeting from day to day until a quorum shall be obtained, and any meeting may be adjourned from time to time by a vote of a majority of a quorum present. But no business except adjournment shall be transacted in the absence of a quorum."

Amended
Jan. 10/88.

17. No officer or clerk of this bank shall pay any check drawn upon it, or pay out money on any order, unless the drawer of such check or order at the time of the presentation thereof have on deposit in the bank funds sufficient to meet such check or order.

[* Words and figures enclosed in brackets erased in copy.]

1040 *Minutes of Stockholders and Directors' Meetings Offered in Evidence.*

Page 25 of Minute Book.

"At a meeting of the following named stockholders of the Marsh National Bank, to-wit: Chas. W. Marsh, Chas. W. Mosher, Rich'd C. Outcalt, Ed. W. Mosher and Wm. A. Sharrar held at the office of said bank in Lincoln, on the 25th day of June, 1883.

The following proceedings were duly had and done, to-wit: Chas. W. Mosher, Chas. W. Marsh, Rich'd C. Outcalt, Ed. W. Mosher and Wm. A. Sharrar were elected a Board of Directors. No further business coming before the stockholders, meeting was adjourned."

Page 26 of Minute Book.

Oath of Directors.

STATE OF NEBRASKA,

Lancaster County, ss:

We, the undersigned Directors of the Marsh National Bank of Lincoln, of Lancaster county, of the State of Nebraska do solemnly swear that we are citizens of the United States and residents of the state of Nebraska, and that we will so far as the duty devolves on us, diligently and honestly administer the affairs of the said bank, and that we will not knowingly violate any of the provisions of the revised statutes of the United States, under which this bank has been organized; and that we are the bona fide owners in our own right of the number of shares of stock subscribed by us, or standing in our names on the books of said bank, and required by said Revised Statutes, and that the same are not hypothecated, or in any way pledged as security for any loan or debt.

1041 (Signed)

CHARLES W. MOSHER.
RICHARD C. OUTCALT.
EDWIN W. MOSHER.
WM. A. SHARRAR.

Subscribed and sworn to before me this 25th day of June, 1883,
a notary public of said county,

[S EAT.]

J. H. McMURTRY.

Notary Public.

1042

Certificate of Officers and Directors.

The undersigned, Chas. W. Mosher, President, R. C. Outcalt Cashier, and C. W. Mosher, E. W. Mosher, Wm. A. Sharrar, Chas. W. Marsh, R. C. Outcalt Directors of the Marsh National Bank, organized under the sections of the Revised Statutes of the United States, which authorize the organization of National Banking Asso-

ciations, approved June 22, 1874, and of subsequent acts in addition to an amendatory thereof, do certify that One Hundred thousand dollars have been paid into said bank, on account of its capital stock, as permanent capital; that the residence of each director, and the amount of stock of which each director is the bona fide owner, are as follows:

Name of director.	Place of residence.	No. of shares
Chas. W. Marsh.....	Sycamore, Ill.....	265
Chas. W. Mosher.....	Lincoln, Nebr.....	350
Richard C. Outcalt.....	" ".....	100
Edwin W. Mosher.....	York, ".....	10
Wm. A. Sharrar.....	York, ".....	10
William W. Marsh.....	Sycamore, Ill.....	265

And that this bank has in good faith complied with all the provisions of said act required to be complied with before receiving authority to commence the business of banking.

CHAS. W. MOSHER, *President.*

R. C. OUTCALT, *Cashier.*

1043

CHAS. W. MARSH,

CHAS. W. MOSHER,

RICHARD C. OUTCALT,

EDWIN W. MOSHER,

WILLIAM A. SHARRAR,

Directors.

STATE OF NEBRASKA,

County of Lancaster, ss:

On this twenty fifth day of June, 1883, before the undersigned, a notary public, of Lancaster county, Nebraska, personall- appeared Chas. W. Mosher, President, Richard C. Outcalt, Cashier, and Chas. W. Mosher, Edwin W. Mosher, Wm. A. Sharrar, Chas. W. Marsh, Rich'd C. Outcalt, Directors of the Marsh National Bank of Lincoln, Nebraska, and made oath that the foregoing certificate and the matters and things therein set forth are true to the best of their knowledge and belief.

Subscribed and sworn to before me this twenty fifth day of June, 1883.

J. H. McMURTRY,

Notary Public. [SEAL.]

1044

Directors' Meeting.

At a meeting of Directors of the Marsh National Bank of Lincoln, Nebr., held at the office of said bank on the 25th day of June, 1883, the following named directors being present: to-wit: Chas. W. Mosher, Chas. W. Marsh, Rich'd C. Outcalt, E. W. Mosher, and Wm. A. Sharrar; the following proceedings were had and done,

towit—Chas. W. Mosher was elected chairman, and Wm. A. Sharrar, secretary.

Officers of the bank were elected as follows, towit:

Chas. W. Mosher, President,
Chas. W. Marsh, Vice President,
Rich'd C. Outcalt, Cashier.

By-Laws were also adopted. No further business coming before the Board, meeting was adjourned.

W. A. SHARRAR, *Sec'y.*

C. W. MOSHER, *Pres't.*

Appointment of Reserve Agents.

Treasury Department.
Office of Comptroller of the Currency.

WASHINGTON, July 6", 1883.

Sir: Your letter without date is received and The Chemical National Bank of New York, and the Commercial National Bank of Chicago named therein as depositories for a portion of the lawful money reserve of your bank are hereby approved for that purpose according to law.

Very respectfully,

J. S. LANGWORTHY,
Acting Comptroller.

C. W. Mosher, Esq., Pres't Marsh Nat'l Bank, Lincoln, Nebr.

1045

Stockholders' Meeting.

At a meeting of the following named stockholders of the Marsh National Bank, held at the office of said bank on the 8th day of January, 1884, Chas. W. Marsh, Chas. W. Mosher, Rich'd C. Outcalt, Edwin W. Mosher and Wm. A. Sharrar, the following named persons were duly elected a Board of Directors: Chas. W. Mosher, Chas. W. Marsh, Richard C. Outcalt, E. W. Mosher, and Wm. A. Sharrar, after which meeting was adjourned.

WM. A. SHARRAR, *Sec'y.*

C. W. MOSHER, *Pres't.*

Directors' Meeting.

At a meeting of Directors of the Marsh National Bank of Lincoln, Nebr., held at the office of the said bank on the 8th day of January, 1884, the following named directors being present, towit: Chas. W. Mosher, Rich'd C. Outcalt, Edwin W. Mosher and Wm. A. Sharrar, the following proceedings were had and done, towit: Chas. W. Mosher was elected President of the Board and Wm. A. Sharrar, secretary and the following officers were duly elected,

Chas W. Mosher, President,
 Chas. W. Marsh, Vice President,
 Rich'd C. Outcalt, Cashier.

It appearing to the Board that the net profits of this association amounts to the sum of fifteen thousand and seventy four 42/100 Dollars for the preceding half year, ending Dec. 31st, 1883, it is hereby directed that the sum of Twenty five hundred dollars, shall be set aside as a surplus fund. And it is further directed that a dividend of 12½% be and hereby is declared, which amounts to the sum of \$12,500 payable Jan'y 15, 1884. No further business coming before the Board, meeting adjourned.

C. W. MOSHER, *Pres't.*

WM. A. SHARRAR, *Sec'y.*

1046

Directors' Meeting.

At a meeting of Board of Directors of Marsh National Bank held at their office on Feb't 14, 1884, the following named directors being present: C. W. Mosher, R. C. Outcalt, E. W. Mosher and W. A. Sharrar. It was decided to sell the present bonds held by the Comptroller to secure circulation — and buy 4½% registered U. S. Bonds. No further business coming before the board, meeting adjourned.

C. W. MOSHER, *Pres't.*

R. C. OUTCALT, *Sec'y.*

Directors' Meeting.

At a special meeting of the Directors of the Marsh National Bank held at their office, Feb'y 20th, 1884, it was unanimously decided to increase the stock of the bank on June 2nd, 1884, to \$200,000.

50%	of	said	increase	payable	May 31, 1884
10%	"	"	"	"	June 30, "
10%	"	"	"	"	July 31, "
10%	"	"	"	"	Aug. 31, "
10%	"	"	"	"	Sept. 30, "
10%	"	"	"	"	Oct. 31, "

It was also decided to change the name of the bank from The Marsh National Bank to the Capital National Bank of Lincoln, Nebr., said change of name and increase of stock to commence on June 2, 1884.

No further business coming before the board, the meeting was adjourned.

C. W. MOSHER, *Pres't.*

R. C. OUTCALT, *Sec'y.*

1047

Authority to Change Name of Bank.

2988.

Treasury Department.

Office of Comptroller of the Currency.

WASHINGTON, May 14th, 1884.

Whereas, the Congress of the United States by an act approved May 3, 1884, did authorize "The Marsh National Bank of Lincoln" located in the city of Lincoln, county of Lancaster, and state of Nebraska, to change its name to "The Capital National Bank of Lincoln" whenever the board of directors of The Marsh National Bank of Lincoln, shall accept the new name by resolution of the said board, and cause a copy of said resolution, duly authenticated to be filed with the Comptroller of the Currency,

And Whereas the board of directors of The Marsh National Bank of Lincoln at a meeting called for the purpose on May 6 1884 did vote to accept the change of name to The Capital National Bank of Lincoln,

And Whereas the President, in accordance with Section 1 of said act, has executed a certificate under the corporate seal of the bank specifying the action taken by the directors of said bank, as above, and their determination as to such change of name, and has caused the same to be recorded in the office of the Comptroller of the Currency,

Now therefore, I, Henry W. Cannon, Comptroller of the Currency, do hereby declare that by virtue of said act the name of The Marsh National Bank of Lincoln, is changed to The Capital National Bank of Lincoln.

In testimony whereof, I have hereunto subscribed my name and caused my seal of office to be affixed to these presents at the city of Washington in the District of Columbia, this 14th day of May, A. D. 1884.

[SEAL.]

H. W. CANNON,
Comptroller of Currency.

1048

Stockholders' Meeting.

May 23rd.

Stockholders' Meeting. At special meeting of stockholders present W. A. Sharrar, E. W. Mosher, R. C. Outcalt and C. W. Mosher, it was decided to amend Articles of Association so as to have seven directors, instead of five and Comptroller to be instructed. Adjourned.

C. W. MOSHER.

R. C. OUTCALT, *Sec'y.*

Directors' Meeting.

At special meeting of directors held May 5th, 1884, at office of Marsh National Bank, there were present W. A. Sharrar, R. C. Outcalt, E. W. Mosher and C. W. Mosher.

Whereas Information has been received from Washington, D. C., notifying this bank of the passage by Congress of the Bill changing our name to The Capital National Bank of Lincoln, Neb., be it therefore resolved that said name be accepted, with all the contingencies, as may be set forth in the law authorizing above change, and that authority be asked for, from Comptroller allowing the change of name above referred to, and that a copy of these resolutions be forwarded to the Comptroller of Currency. Adjourned.

C. W. MOSHER, *Pr.*

R. C. OUTCALT, *Sec'y.*

1049

Special Meeting.

At special meeting of directors held May 23, 1884, at office of Marsh National Bank, there were present W. A. Sharrar, E. W. Mosher, R. C. Outcalt and C. W. Mosher.

On motion of Mr. Outcalt the name of the bank shall be Capital National Bank after May 31st at close of business on that day and that out of the undivided profits as shown by the books at close of business May 31st, \$1500 shall be carried to surplus a/c, and the balance of profits shall be divided among stockholders in lieu of regular July dividend.

That on June 1st the Capital stock of this bank shall be increased to \$200,000 and proper notification of same be forwarded to the Comptroller of Currency.

Resignation of C. W. Mosher as Vice Pres't, having been received same was accepted and H. J. Walsh elected to fill the vacant place, to commence at close of business on May 31st, 1884.

The number of directors having been increased to seven, C. E. Yates and E. P. Hamer were elected to make up the number to commence May 31st, 1884.

Messrs. R. C. Outcalt, C. W. Marsh, E. W. Mosher, W. A. Sharrar resignation- having been handed in, same were accepted and the names of A. P. S. Stuart, W. W. Holmes, R. O. Phillips and D. E. Thompson proposed in their places, and were duly elected to take office at close of business May 31st, 1884. Adjourned.

C. W. MOSHER, *Pr.*

R. C. OUTCALT, *Sec'y.*

Receipt for United States Bonds.

Treasury of the United States.

WASHINGTON, D. C., June 10th, 1884.

Received of the Capital National Bank of Lincoln, Nebraska registered bonds of the United States of the kinds and amounts described below, in the name of the Treasurer of the United States, in trust for said bank, amounting to twenty-five thousand dollars, which are held by the treasurer of the United States as security for the redemption and payment of any circulating notes that have been or may be delivered to said association by the Comptroller of the Currency.

No. of bank, 2988, Register 2.

No. of Deposit, 3, Folio 180.

A. U. WYMAN,

Treasurer of the United States.

Duplicate.

Date of bond, June 9, 1884.

Rate of interest $4\frac{1}{2}$

Title of loan, July '70 and Jan. '71

When redeemable, 1891.

No. 11816—\$5,000

No. 30550—\$10,000

No. 30549—\$10,000

 \$25,000

1050

Authority to Increase Capital.

No. 2988.

Treasury Department.

Office of Comptroller of the Currency.

WASHINGTON, June 11, 1884.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency that the Capital stock of the Capital National Bank of Lincoln, Nebraska, has been increased in the sum of One hundred thousand dollars (\$100,000) in accordance with the provisions of its Articles of Association, and that the whole amount of such increase has been paid in, and that the paid-up capital stock of said bank now amounts to the sum of Two hundred thousand dollars (\$200,000)

Now, it is hereby certified that the capital stock of the Capital National Bank of Lincoln, Nebraska, aforesaid has been increased as aforesaid, in the sum of one hundred thousand dollars (\$100,000) that said increase of capital has been paid into said bank as a part

of the capital stock thereof, and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I have hereunto affix- my official signature and seal of office.

[SEAL.]

H. W. CANNON,
Comptroller.

Stockholders' Meeting.

At meeting of stockholders held second Tuesday in January of 1885 there *was* present A. P. S. Stuart, W. W. Holmes, R. E. Moore C. E. Yates, D. E. Thompson, C. W. Mosher and R. C. Outcalt. Upon motion of Mr. Stuart the old board of directors were renominated and upon vote of stockholders unanimously elected. Meeting then adjourned.

C. W. MOSHER, *Pres't.*

R. C. OUTCALT, *Sec'y.*

Directors' Meeting.

At a meeting of directors held this second Tuesday in January 1885, present, A. P. S. Stuart, W. W. Holmes, C. E. Yates, D. E. Thompson and C. W. Mosher. Motion of C. E. Yates was carried to effect, that out of the undivided earnings of the past six months, that a dividend of $6\frac{1}{2}\%$ be paid. 1% carried to surplus and balance to remain in undivided profits a/c. Upon motion of A. P. S. Stuart the old officers were elected. Meeting adjourned.

($7\frac{1}{2}\%$ paid)

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Cash. Sec'y.*

1051

Directors' Meeting.

At a regular meeting of directors held this second Tuesday in July, 1885, there *was* present C. W. Mosher, W. W. Holmes, A. P. S. Stuart, C. E. Yates, E. P. Hamer.

Upon motion of W. W. Holmes, a dividend of $6\frac{1}{2}\%$ was declared. 1% run to surplus and bal. to remain in undivided profit a/c. Meeting adjourned.

C. W. MOSHER, *P't.*

— — —, *Cash.*

Stockholders' Meeting.

At regular meeting of stockholders this second Tuesday in January, 1886, the following were present: W. W. Holmes, A. P. S. Stuart, Geo. Ballantine, C. W. Mosher, R. C. Outcalt. Upon motion of W. W. Holmes, the old board of directors were re-elected.

C. W. MOSHER, *P't.*

R. C. OUTCALT, *Cash., Sec'y.*

Directors' Meeting.

At regular meeting of Directors held second Tuesday in January, 1886, present W. W. Holmes, A. P. S. Stuart, C. W. Mosher, R. O. Phillips, C. E. Yates. Upon motion of R. O. Phillips, a dividend of 8% and 1% run to surplus was declared. Meeting adjourned.

R. C. OUTCALT, *Cash- Sec'y.*

C. W. MOSHER, *Pt.*

Stockholders' Meeting.

At special meeting of stockholders held June 2, 1886, at office of Bank, present, C. W. Mosher, R. C. Outcalt, C. E. Yates, H. J. Walsh, A. P. Stuart, G. Ballantine, R. E. Moore, D. E. Thompson, W. W. Holmes. Upon motion of H. J. Walsh a resolution was passed asking the Comptroller for permission to increase capital stock to \$300,000 on July, 1886. Upon vote it was carried as follows:

C. W. Mosher.....	600	H. J. Walsh.....	100
R. C. Outcalt.....	330	W. W. Holmes.....	100
G. W. Ballantine.....	100	A. P. S. Stuart.....	100
D. E. Thompson.....	140	C. E. Yates.....	50
R. E. Moore.....	10		

R. C. OUTCALT, *Cash., Sec'y.*

C. W. MOSHER, *Pt.*

1052

Directors' Meeting.

At special meeting of directors held June 21, 1886, present R. O. Phillips, W. W. Holmes, A. P. S. Stuart and C. W. Mosher.

A resolution was introduced and upon vote same was carried to authorize the Comptroller of Currency to transfer the bonds held by him in trust for the Marsh National Bank to the credit and for the use of the Capital National Bank. Meeting adjourned.

R. C. OUTCALT, *Cash., Sec'y.*

C. W. MOSHER, *Pt.*

Authority to Change Bonds.

Treasury Department.
Office of Comptroller of the Currency.

WASHINGTON, June 26, 1886.

DEAR SIR: In accordance with the requirements of the 5137th section of the Revised Statutes, you are hereby advised that \$25,000 Dollars of United States Bonds, deposited with the treasurer of the

United States, and held by him to secure the redemption of the circulating notes of the Marsh National Bank of Lincoln, Neb., have been assigned to the Treasurer, U. S., in trust for The Capital National Bank of Lincoln, Nebr. The bonds so assigned are described as follows:

No. of bonds.	Numbers.	Loan.	Denominations.	Amount.
1	11603	4½	5,000	5,000
1	646	"	20,000	20,000
Total amount.....				\$25,000

Treasurer's receipt of Feb'y 26, 1884 cancelled. Above bonds have been transferred to treasurer U. S. in trust for The Capital Nat'l Bank of Lincoln, Nebr.

Very respectfully,

V. P. TRYDER,
Deputy Comptroller.

To Cashier Capital National Bank, Lincoln, Neb.

1053

Receipt for United States Bonds.

Treasury of the United States.

WASHINGTON, D. C., June 29, 1886.

Received of the Capital National Bank of Lincoln, Nebraska, registered bonds of the United States of the kinds and amounts described below, in the name of the Treasurer of the United States, in trust for said bank, amounting to twenty five thousand dollars, which are held by the Treasurer of the United States as security for the redemption and payment of any circulating notes that have been or may be delivered to said association by the Comptroller of the Currency.

C. N. JORDAN,
Treasurer of the United States.

No. of Bank 2988. Register 2.

No. of deposit, 4, Folio 180.

Date of bond.	Rate of interest.	Title of loan.	When redeemable.	No.	Par value.
June 28, 1886	4½ %	Funded loan, 1891	1891	13,486	5,000
" " "	"	" " "	"	699	20,000
Total					25,000

Duplicate.

Authority to Increase Capital.

2988.

Treasury Department.

Office of Comptroller of the Currency.

WASHINGTON, D. C., July 9th, 1886.

Whereas satisfactory notice has been transmitted to the Comptroller of the Currency, that the capital stock of The Capital National Bank of Lincoln, Lincoln, Nebraska, has been increased in the sum of one hundred thousand dollars (\$100,000) in accordance with the law and provisions of the act of May 1, 1885 and that the whole amount of such increase has been paid in, and that the paid up capital stock of said bank now amounts to the sum of three hundred thousand dollars (\$300,000)

Now, it is hereby certified that the capital stock of The Capital National Bank of Lincoln, Nebraska aforesaid has been increased as aforesaid in the sum of One hundred thousand Dollars (\$100,000); that said increase of capital has been paid into said bank as a part of the capital stock thereof; and that the said increase of capital is approved by the Comptroller of the Currency.

In witness whereof I hereunto affix my official signature and seal of office.

 Comptroller.

1054

Directors' Meeting.

At regular meeting of Board of Directors held at Bank Room on July 13, 1886, there was present C. W. Mosher, A. P. S. Stuart, E. P. Hamer, R. O. Phillips and C. E. Yates. On motion of A. P. S. Stuart, it was voted to declare a dividend of 7% and run 1% to surplus out of the undivided profits of the bank.

No further business coming before the board meeting adjourned.

Directors' Meeting.

Special directors' meeting held at office of Bank, Oct. 15, 1886, present R. O. Phillips, C. W. Mosher, W. W. Holmes, C. E. Yates. On motion of R. O. Phillips the following resolution was passed:

Resolved: That the President of the Capital National Bank be authorized to endorse the notes and bills discount of said bank when it may become necessary to re-discount the same.

No further business coming before the meeting they adjourned.

R. C. OUTCALT, Sec'y.

C. W. MOSHER, P't.

Directors' Meeting.

At regular meeting of board of directors held Jan. 11, 1887, present C. W. Mosher, W. W. Holmes, E. P. Hamer, D. E. Thompson & R. O. Phillips. On motion of W. W. Holmes a dividend of 6% was ordered declared & \$2000 ordered placed to surplus a/c. No further business coming before the board they adjourned.

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Sec'y.*

Stockholders' Meeting.

At annual meeting of stockholders held Jan. 11, 1887, there *was* present—

C. W. Mosher.....	570 shares	C. L. Hall.....	20 shares
R. C. Outcalt.....	350 "	C. Hammond.....	100 "
W. W. Holmes.....	150 "	E. P. Hamer.....	75 "
H. J. Walsh.....	150 "	D. E. Thompson..	255 "

On motion of Mr. Hammond the old directors were all re-elected & the clerk authorized to cast the ballots to that effect. Meeting adjourned.

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Sec'y.*

1055

Directors' Meeting.

At meeting of directors held January 11, 1887 there were present C. W. Mosher, E. P. Hamer, W. W. Holmes & D. E. Thompson.

Upon motion of Mr. Thompson the old officers were all declared duly elected for ensuing year. Meeting adjourned.

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Sec'y.*

Directors' Meeting.

At regular meeting of directors held at office of bank there *was* present on July 12, 1887 A. P. S. Stuart, C. W. Mosher, D. E. Thompson, E. P. Hamer.

Upon motion of D. E. Thompson a dividend of 6% was declared & \$2000 ordered put to surplus.

A. P. S. Stuart made motion that J. W. Maxwell be made Asst. Cashier. Meeting adjourned.

C. W. MOSHER, *Pt.*

R. C. OUTCALT, *Sec'y.*

Stockholders' Meeting.

At annual meeting of stockholders there *was* present on Jan. 10, 1888—

A. P. S. Stuart.....	150 shares
D. E. Thompson.....	230 "
R. C. Outcalt.....	350 "
H. J. Walsh.....	150 "
R. O. Phillips.....	150 "
C. W. Mosher.....	550 "

Upon motion of Mr. D. E. Thompson the Sec'y was instructed to cast a ballot for re-election of the old board of directors.

Motion of R. O. Phillips meeting adjourned.

R. C. OUTCALT, *Sec'y.*

C. W. MOSHER, *Pt.*

1056

Directors' Meeting.

At regular meeting of Directors held at 8 p. m., June 10, 1888 there were present, A. P. S. Stuart, R. O. Phillips, D. E. Thompson, C. E. Yates, C. W. Mosher.

Upon motion of Mr. D. E. Thompson the by-laws were amended to read as follows:

Section 14, line 5 erase April & October.

Section 17 amended to read: "No money shall be paid out on any check drawn upon this bank or on any order unless the drawer of such check or order at the time of the presentation thereof had on deposit in the bank funds sufficient to meet such check or order, except on the approval of the President of Cashier". Motion unanimously carried.

There being a net profit on the business of last six months of 20,024.41 upon motion of R. O. Phillips a dividend of 6% was declared & \$2000 carried to surplus.

Meeting adjourned.

R. C. OUTCALT, *Sec.*

C. W. MOSHER, *Pt.*

Directors' Meeting.

At regular meeting of Board of Directors held on July 10, 1888 A. P. S. Stuart, C. W. Mosher, W. W. Holmes, E. P. Hamer present.

Upon motion of E. P. Hamer a dividend of 6% was declared & 2000.00 carried to surplus.

Meeting adjourned.

R. C. OUTCALT, *Sec*

C. W. MOSHER, *Pt.*

Stockholders' Meeting.

Annual meeting of stockholders held at office of bank on Jan 8/89 at 8 o'clock, there were present:

D. E. Thompson...	230 shares	H. J. Walsh.....	150 shares
C. E. Yates.....	103 "	H. Gemer.....	50 "
A. P. S. Stuart....	150 "	C. W. Mosher.....	550 "
W. W. Holmes....	150 "	J. McConnuff.....	37 "
R. C. Outcalt.....	300 "	C. Thompson.....	50 "
<hr/>			
1820			

On motion of Mr. Yates the Sec'y was instructed to cast the ballot for directors the ensuing year as follows: A. P. S. Stuart, R. O. Phillips, C. E. Yates, C. W. Mosher, D. E. Thompson, W. W. Holmes, E. P. Hamer.

Motion of A. P. S. Stuart meeting adjourned.

C. W. MOSHER, *P't.*

R. C. OUTCALT, *Sec.*

1057

Directors' Meeting.

On motion of Mr. Thompson the old officers were elected to serve for the ensuing year.

Mr. Thompson moved that directors Holmes, & Stuart be appointed a committee to examine the notes of the bank & also to make as many such examinations of notes & books as they may see fit.

The earnings of the bank for the last six months showing

Net earnings of	20,572.74
Undivided profits	305.12
<hr/>	
\$20,877.86	

On motion of Mr. Yates a dividend of 6% was declared payable at once & %2000 carried to surplus fund. Meeting adjourned.

C. W. MOSHER, *P't.*

R. C. OUTCALT, *Sec.*

LINCOLN, NEB., Jan. 20, 1889.

As per instructions of the Board of Directors we have examined paper of Capital National Bank & find same satisfactory.

W. W. HOLMES,
A. P. S. STUART.

Directors' Meeting.

At regular meeting of directors held at office of bank at 8 o'clock P. M., July 9/1889 there was present A. P. S. Stuart, W. W. Holmes, D. E. Thompson, C. E. Yates & C. W. Mosher.

The earnings of the bank showing as follows—

Net earnings & Undivided profits \$20,595.38

Upon motion of Mr. Stuart & seconded by D. E. Thompson a dividend of six per cent was declared & \$2000 run to surplus.

Upon motion of C. E. Yates, meeting adjourned.

R. C. OUTCALT, *Sec.*

C. W. MOSHER, *P't.*

Stockholders' Meeting.

At regular annual meeting of stockholders held at office of bank at 8 o'clock, Jan. 14, 1890. It was moved by Mr. Stuart to increase the number of directors from seven to nine & that the Sec'y be authorized to cast the vote of stockholders for directors for ensuing year with the result that A. P. S. Stuart, E. P. Hamer, H. J. Walsh, R. O. Phillips, D. E. Thompson, W. W. Holmes, C. E. Yates, R. C. Outcalt & C. W. Mosher were elected.

The number of shares of stock being present & voted as follows:—
G. W. Ballantine, 200; E. F. Hamer, 75; W. W. Holmes, 150; A. P. S. Stuart, 150; R. O. Phillips, 100; R. C. Outcalt, 350; C. W. Mosher, 550,—total 1575.

Upon motion of Mr. Outcalt meeting adjourned.

C. W. MOSHER, *P't.*

1058

Directors' Meeting.

Regular directors' meeting held at office of bank on Jan. 14/90 at 8 o'clock. There was present, R. O. Phillips, R. C. Outcalt, W. W. Holmes, E. P. Hamer & C. W. Mosher.

The earnings of the bank showing as follows:—

Net earnings & undivided profits 18,098.54

It was moved by A. P. S. Stuart that a dividend of 5% be declared & \$2000 run to surplus.

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*

Directors' Meeting.

Regular meeting of directors held at office of bank July 11, 1890. There was present, R. O. Phillips, C. E. Yates, W. W. Holmes, A. P. S. Stuart, C. W. Mosher.

The earnings of the bank showing as follows:—

Net earnings & profits 17,500.19

It was moved by A. P. S. Stuart that a dividend of 5% be declared & \$2000 added to surplus.

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*

Stockholders' Meeting.

At regular annual stockholders' meeting held Jan. 13, 1891 at 7:30 at office of bank there was present,

C. E. Yates	113 shares	C. Hammond	50 shares
D. E. Thompson	250 "	E. P. Hamer	75 "
A. P. S. Stuart	150 "	R. C. Outcalt	350 "
W. W. Holmes	150 "	C. W. Mosher	550 "

1688 shares

Upon motion of C. Hammond the Sec'y was authorized to cast the vote for old directors,—so done.

Upon motion of D. E. Thompson meeting adjourned.

C. W. MOSHER, *P't.*

1059

Directors' Meeting.

At regular meeting of directors held at office of Bank on Jan. 13/91 at 8:30 there was present C. E. Yates, D. E. Thompson, W. W. Holmes, A. P. S. Stuart, W. W. Holmes & C. W. Mosher.

It was moved by C. E. Yates that all the old officers be elected for ensuing year, which motion was unanimously carried.

A. P. S. Stuart moved & it was carried that a dividend of 5% be declared & \$2000 run to surplus out of the \$17,162.11 of undivided profits on hand.

C. W. MOSHER, *P't.*

Directors' Meeting.

At regular meeting of board of directors held at office of bank July 13, 1891 at 8 o'clock, there was present C. E. Yates, E. P. Hamer, D. E. Thompson, R. O. Phillips, C. W. Mosher.

The books showing the following earnings & expenditures:

Left over from Jan. 1/91	162.11
Gross earnings to July 1/91	37,878.65
	<hr/> 38,040.76
Wages paid	6,644.98
Int. paid	8,943.71
Expenses paid	5,198.28
	<hr/> 20,786.97
Net earnings	<hr/> 17,253.79

It was moved by R. O. Phillips that a dividend of 5% be declared & 2000 run to surplus.

A. P. S. Stuart moved that R. C. Outcalt be elected to fill the vacancy caused by death of W. W. Holmes. Motion was seconded by E. P. Hamer & was unanimously carried.

Moved & carried by R. O. Phillips that Oscar Funke be authorized to sign dfts. for cashier until further notice.

Upon motion of D. E. Thompson it was resolved as follows:

That the Comptroller of Currency be and he is hereby authorized to withdraw \$50,000 U. S. Bonds deposited with the treasurer of the U. S. by this bank to secure circulation and described as follows: \$50,000 of the Loan 1891, 4½% interest, and that the Chemical Nat. Bank be and is hereby authorized to sell, assign & transfer the same and to appoint one or more att'ys for that purpose.

Upon motion of Mr. A. P. S. Stuart & seconded by all present the following Resolution was unanimously adopted & written copy ordered for purpose of delivering to the family of Mr. Holmes.

Upon motion of C. E. Yates meeting adjourned.

C. W. MOSHER, *P't.*

1060

Stockholders' Meeting.

Held for Jan. 12, 1892 at office of bank at 8 o'clock, there was present the following stock:

C. E. Yates.....	113 Shares	H. Gerner	100 s
C. Thompson	50 Shares	J. K. Honeywell...	50 s
R. O. Phillips.....	50 s	A. P. S. Stuart....	150 s
C. W. Mosher.....	550 s	H. J. Walsh.....	150 s
R. C. Outcalt.....	350 s		
			<hr/>
			1563

Mr. Stuart moved that old board of directors be declared re-elected for ensuing year.

Mr. Honeywell moved to adjourn, which was carried.

C. W. MOSHER, *P't.*

Directors' Meeting.

Held Jan. 12, 1892, there was present A. P. S. Stuart, C. E. Yates, C. W. Mosher, R. O. Phillips, R. C. Outcalt.

Upon report of Pres't that there was 18,128.02 net profits it was moved and carried to declare a 5% dividend, run 2000 to surplus and leave remainder in undivided profits.

Upon motion of Mr. Stuart the old officers were elected unanimously. Meeting adjourned.

C. W. MOSHER, *P't.*

Directors' Meeting.

Held at office of Bank, July 12/92 at 8 o'clock; present R. O. Phillips, A. P. S. Stuart, E. P. Hamer, C. W. Mosher, C. E. Yates.

Upon report of president that there had been earned net in previous six months 14,026.81 in was moved & seconded that a dividend of 4% be declared & 2000 added to surplus a/c.

Meeting adjourned.

C. W. MOSHER, *P't.*

Directors' Meeting.

At a special meeting of directors held Feb. 20-92 there was present A. P. S. Stuart, E. P. Hamer, C. E. Yates, D. E. Thompson, R. O. Phillips, R. C. Outcalt, C. W. Mosher.

Upon motion of Mr. D. E. Thompson, E. P. Hamer was put upon the Discount Committee in place of W. W. Holmes deceased.

Under date of Feb. 16/92 a communication was received from the Comptroller regarding some matters pertaining to the bank affairs & a full explicit reply was made thereto under date of Feb. 20/92 & signed by each director. After further discussion of the affairs of the bank, meeting adjourned.

C. W. MOSHER, *P't.*

1061 (At page 68 of Minute Book, three slips of paper are pinned as follows:)

"Left over	26.81	
"Net received	25,915.72	
		\$25,942.53
"Wages	7,159.98	
"Int. paid	5,993.39	
"Expense a/c	6,228.96	
		19,485.33
		6,457.20

"Phillips moved that dividend——

"E. S. D.

1062 (Page 69 of Minute Book, the following appears in pencil on letter head of Capital National Bank.)

"EXHIBIT X-107."

LINCOLN, NEB., Jan. 22, 1893.

Special meeting of Directors of bank held at 3 o'clock, Jan. 22/93. Present Walsh, Hamer, Outcalt, Yates, Mosher.

Upon motion of Mr. Yates it was resolved to turn the bank over

CHARTS

TOO

LARGE

FOR

FILMING

into the hands of the Comptroller of Currency & seconded by Mr. Hamer.

Upon motion of Walsh, meeting adjourned.

E. S. D.

C. W. MOSHER, *P't.*

1063-1090

H. J. WHITMORE recalled for further cross-examination:

1091 Q. I will ask you if you have made a so-called reconciliation, or attempted reconciliation of the statement of the condition of the Capital National Bank at the close of business December 19, 1890, was it appeared in the newspapers and as it appeared in the balance book?

A. Yes, sir.

Q. Is Exhibit "AJ" the statement which contains the figures concerning that so-called reconciliation?

A. Yes sir, that is made on the same plan as the other two that were introduced here, the one of December 28th, 1886, and of July 9th, 1891.

1092 Mr. THOMAS: We offer Exhibit "AJ" in evidence.
Exhibit "AJ" received in evidence.
(Copy on following page.)

Q. Was that compiled from the same books, and in the same manner as the one you made with reference to December 28th, 1886?

A. All except the item of check deposits and certificates of deposits. The bank ledger for December 1890 is not here and I took the figures from the copy of the report that is in the record on those two items. I assumed that they were correct, in fact I proved them, except as to the division between the check deposits and the certificates of deposit. In fact the check deposits prove out just as they report them.

Q. What report is that?

A. December 19th, 1890.

Witness excused.

1093 (Here follows sheet No. 1, Exhibit "AJ," appearing at page 1093.)

1094 H. T. JONES, recalled.

By Mr. THOMAS:

Q. I have you Exhibit No. 107, and will ask you—

Mr. ROSE: I will say this that we have concluded that so far as the records of the proceedings and the minutes alone are concerned, we will not interpose the objection. As to Exhibit No. 107 we withdraw the objection.

Mr. THOMAS: Exhibit No. 107 is offered in evidence then.

Exhibit 107 received and read in evidence as follows:

"C. W. Mosher, Pres't. H. J. Walsh, Vice Pres't. R. C. Outcalt, Cashier.

Capital National Bank.

Capital \$300,000.

LINCOLN, NEB., Jan. 22, 1893.

Special Meeting of Directors of Bank held at 3 o'clock, Jan. 22/93. Present, Walsh, Hamer, Outcalt, Yates, Mosher.

Upon motion of Mr. Yates, it was resolved to turn the bank over into the hands of the Comptroller of Currency, and seconded by Mr. Hamer.

Upon motion of Walsh meeting adjourned.

C. W. MOSHER, *P't.*

Mr. THOMAS: We offer in evidence Exhibits X-1074 and X-1075, each containing six statements with the certificates attached.

Mr. ROSE: Each of the defendants objects to each of these as incompetent, irrelevant and immaterial under the issues tendered, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

1095 Exhibits 1074 and 1075 received in evidence.

(Here follow six statements with certificates attached marked Sheets Nos. 1 to 6, appearing at folio 1095.)

CHARTS

TOO

LARGE

FOR

FILMING

1095½

Ex. 1074 (7 Sheets). O. P. H.

DISTRICT OF COLUMBIA,

City and County of Washington, ss:

O. P. H.

Under the provisions of Section 884 of the Revised Statutes of the United States, I, Lawrence O. Murray Deputy and Acting Comptroller of the Currency, do hereby certify that the papers hereto attached are true and complete copies of the original reports of the condition of "The Capital National Bank of Lincoln" Neb., on the 28th of December 1886; 1st of August 1887; 5th of October 1887; December 12th 1888; September 30th 1889; December 11th 1889, made to the Comptroller of the Currency in accordance with the provisions of Section 5211 of the Revised Statutes of the United States, and of the whole of such originals on file and of record in my Office.

In testimony whereof, I have hereto subscribed my name, and caused my Seal of Office to be affixed to these presents, at the Treasury Department in the City of Washington and District of Columbia, this 22d day of April, A. D. 1899.

[SEAL.]

LAWRENCE O. MURRAY,

Deputy and Acting Comptroller of the Currency.

1096 (Here follow six statements with certificate attached marked Sheets Nos. 1 to 6, appearing at page 1096.)

1096½

EXHIBIT X-1075.

Ex. 1075.
O. P. H.DISTRICT OF COLUMBIA,
City and County of Washington, ss:

O. P. H.

Under the provisions of Section 884 of the Revised Statutes of the United States, I Lawrence O. Murray, Deputy and Acting Comptroller of the Currency, do hereby certify that the papers hereto attached are true and complete copies of the original reports of the condition of "The Capital National Bank of Lincoln, Neb.", on the 2d of October, 1890; 19th of December, 1890; 9th of July 1891; 25th of September 1891; 2d of December 1891; and 9th of December 1892, made to the Comptroller of the Currency in accordance with the provisions of Section 5211 of the Revised Statutes of the United States, and of the whole of such originals on file and of record in my Office.

In testimony whereof, I have hereto subscribed my name, and caused my Seal of Office to be affixed to these presents, at the Treasury Department in the City of Washington and District of Columbia, this 22d day of April, A. D. 1899.

[SEAL.]

LAWRENCE O. MURRAY,
Deputy and Acting Comptroller of the Currency.

1097 Mr. WALTER T. SCOTT, called as a witness on behalf of the
plaintiffs, and being first duly sworn, testified as follows, to-
wit:

Direct examination.

By Mr. THOMAS:

Q. You may state your name to the reporter.

A. Walter T. Scott.

Q. Where do you reside?

A. In Lincoln.

Q. How long have you lived there?

A. Since April, 1872.

Q. What has been your occupation since you have lived there?

A. Bookkeeping.

Q. Were you,—since you have lived in Lincoln were you ac-
quainted with Charles W. Mosher, and Mr. Outcalt?

A. Yes, sir.

Q. And were you acquainted with the bank—the banking con-
cern that was known as the Marsh Brothers, Mosher and Company?

A. Yes, sir.

Q. Were you ever in the employ of that company?

A. I was.

Q. Now you may state as near as you can recall when you entered
the employ of Marsh Brothers, Mosher & Company of Lincoln,
Nebraska?

A. Sometime in July, 1882.

Q. What did you do for that company; what class of work?

A. I was bookkeeper.

Q. And did you know a man by the name of S. K. Hale, other-
wise known as Colonel Hale?

A. Yes, sir.

1098 Q. Was he working there at the same time?

A. Yes sir, he was working there.

Q. And were you in Seward some weeks ago and examined the
books in this room, that purport to be the books of Marsh Brothers,
Mosher & Company, and the Marsh National Bank, and of the
Capital National Bank?

A. Yes, sir.

Q. Did you look into those books, and see the handwriting and
examine them?

A. I did.

Q. Did you find any of your handwriting on them?

A. I did.

Q. Did you find the handwriting of Mr. Hale?

A. Yes sir.

Q. Now did you find books that were marked on the backs of them
Marsh Brothers, Mosher & Company?

A. Yes sir.

Q. And some marked "M. N. B", Marsh National Bank?

A. Yes, sir.

Q. And others purporting to be of the Capital National Bank?

A. Yes, sir.

Q. What can you say as to whether or not those are the books that were kept in the regular course of business and in which the transactions of those various institutions were recorded?

A. They were the books that were in the bank at the time I was there.

Q. And you were head bookkeeper, or who was?

A. Hale was head bookkeeper at the time I went in there.

1099 Q. How long did you continue to work in those various concerns?

A. Until 1887.

Q. Did you work there continuously from the time you began there in 1882, until you quit in 1887?

A. Yes, sir.

Q. Now you were with the bank when the—what was known as the banking company of Marsh Brothers, and Mosher, became the Marsh National Bank?

A. Yes.

Q. Now did you ever have any conversation with Mr. Mosher, or do you know from other sources where the assets of the Marsh National Bank came from,—that is, what became of the assets of the Marsh National Bank when it was incorporated?

A. They were transferred to the Marsh National Bank,—it was Marsh Brothers, Mosher & Company, and they just simply transferred the balances onto another set of books.

Q. And did you ever have a talk with Mr. Mosher in regard to what started the bank,—what entered into it?

A. I was riding out to a baseball game one day and Mr. Mosher told me how he came to get into the banking business; he used to work for his uncles,—the Marsh Brothers were his uncles,—

1100 A. (continued). and he told me he worked for the— and saved up his money and bought some stock in the Marsh Harvester Company, and he afterwards sold that stock for \$2,000, and he came to Lincoln, and he bought into what was called the old State bank, and Dick Outcalt was cashier of the bank, and he asked Dick Outcalt what he could invest that money in, and Dick told him to start a bank, and Mosher told me he laughed about starting a bank with \$2,000, but finally they came to some agreement and started a bank at Ninth and "O" street, and Dick Outcalt was to go in as cashier, and that is the way it was started.

Q. Go ahead and give us the entire conversation.

Q. As to what entered into the bank, and what made up the assets of the bank.

A. Marsh Brothers were Mosher's uncles, and Outcalt was the Company; Marsh Brothers, so he told me just loaned them the money,—in fact the bank was kind of a collection agency for the various Marsh companies' notes.

Q. Didn't have much banking business, you mean?

1101 Q. Did the Marsh Brothers companies afterwards fail?

Q. What do you know about the failure of Marsh Brothers companies?

Q. Did you have any talk with Mr. Mosher in regard to the failure of the Marsh Brothers, and changing the name of the Marsh National Bank to the Capital National Bank?

A. Yes, sir, I did.

Q. You may state what that conversation was.

A. He told me that the Marsh Harvester Company had failed and that they would have to change the name of the bank, and that they were going to make a national bank of it, and he asked me to suggest a name, and I told him to make it the Second National Bank, and he said No, they didn't want to play second fiddle to the First National Bank, and in a day or two he came to me and asked how the Capital National Bank would be, and I said that would be a good name.

1102 Q. Did he say anything with reference to getting other stockholders?

A. Yes, sir.

Q. What was it?

A. He said they were going to take in a lot of new stockholders, and raise the capital to \$200,000, and that they wanted to get R. E. Moore, and D. E. Thompson and such men as that in because they would give stability to the bank, and that they were going to get them if they could even if they had to give them some stock to go into it.

Q. When did you say you quit the employ of the Capital National Bank?

A. In 1887.

Q. How did you happen to quit, and what business did you go into at that time?

A. I went into the laundry business; I was interested in a laundry and I wanted to tend to it myself, and I left the bank to attend to my own business.

Q. And did you have any business transactions with the bank after that?

A. Yes, sir.

Q. What was the nature of those transactions?

1103 A. I used to borrow money of them, and used to keep my account there,—my laundry account there, and I was often in the bank.

Q. And do you remember of having given the Capital National Bank, or Mosher or Outcalt, or some of them connected with the bank some notes and mortgages along in 1891?

A. Yes.

Q. What was the amount of those notes, and give us the transaction; how you happened to give them to them, and just what was done at that time.

A. I was owing the bank at that time something over eighteen thousand dollars, and Mosher came to me one day and said they needed some money, and asked me if I couldn't raise money and pay up some of those notes. I told him I couldn't pay them but would do what I could, so I collected what I could and paid him something over \$5,000, and gave him two notes of \$6,500 each to

run five years, for the balance, then I gave him a mortgage on my property for \$10,000, and he was to raise \$10,000 on that if he could and apply it on the \$13,000 of notes I gave him.

Q. How did that \$10,000 note and mortgage happen to be given; give us the circumstances?

A. He asked me if I couldn't raise him some more money, and I told him I couldn't; times were hard and I didn't think I could raise any more money, and he says "Well," he says, "couldn't you raise it on a mortgage on your property?" "Why," I says, "Mosher I would have to put every piece of property I have got into a mortgage to raise \$10,000 these hard times, and I doubt even if I could raise it then, there won't anybody loan it on real estate." "Well," he says, "I can get the money if you will make the note and mortgage,—I can get the money." So I made the note and mortgage and give it to him with the understanding that if he sold the note and mortgage the \$10,000 was to go on the two notes of \$6,500 each, but I afterwards learned,—after the bank failed—

Q. Now that \$10,000 note you say was secured by a mortgage on your property?

A. Yes.

Q. What became of it when you last heard of it?

A. It was sold to a bank—I forget the name of the bank. This was long since,—

A. And I suppose Mosher used the money himself.

Q. Was the mortgage,—that \$10,000 mortgage was it foreclosed,—did you lose your property?

A. The mortgage was afterwards foreclosed.

Q. Was the property sold?

1105 A. And the property was sold for eleven thousand and some odd dollars; I forget what the exact amount was.

Q. Did you ever get credit on your two \$6,500 notes for this \$10,000 note and mortgage?

A. I did not.

Q. And did you ever pay the two notes for \$6,500 each?

A. I did not.

Q. Now after this talk in August, '91, did you have any talk with Mr. Mosher, subsequently?

A. Yes, sir, I had a talk with him after that, he came to me again and said he would like to—

Q. You may state what the conversation was.

A. I met him one day and he asked me to call around at the bank; said he would like to see me.

Q. When was that?

A. That was sometime in the early part of September, '91, and I went around and Mr. Outcalt let me in at the side door; it was after banking hours.

1106 A. (continued). —and he asked me if I could raise him some more money and I told him I couldn't; I didn't have anything I could raise it on; I says, "You have a mortgage on everything I've got," and I says, "I couldn't raise any more just now."

Q. Well now what happened after Mr. Outcalt let you in at the bank?

A. I think they was having a meeting there of the stockholders when I went in.

Q. You mean directors or stockholders?

A. Directors, or what ever you call them, and there was a number of them there; there was Mr. Mosher and Mr. Outcalt, and A. P. S. Stuart and H. J. Walsh and D. E. Thompson and several others; I didn't see them all, but when Mosher came out of the room,—when I went in they was talking pretty loud; seemed to be quarreling about something; some letter they had got from the Comptroller, and Mosher when he came out he seemed flushed and angry, and I overheard Mr. Thompson say that he thought the whole thing was rotten right through and he was going to get out of it.

Q. That was in September, 1891?

A. Yes, sir.

Q. How long did you stay there?

1107 A. Oh I didn't stay very long; a few minutes; I didn't stay because they had a meeting there; I told Mosher I couldn't raise any more money and I left.

Q. And how well were you acquainted with these men who were interested in that bank—did you know all of the directors of the bank?

A. Yes, sir, I knew them all.

Q. And were they around the bank frequently?

A. Some of them.

Q. Well what ones were there, that were around there frequently?

A. Well H. J. Walsh,—he owned the building,—he used to be there quite often, and A. P. S. Stuart was there a good deal to-, and W. W. Holmes when he was alive, he was around there a good deal, and Mr. Thompson, and several of them were around there.

Q. And Mr. Yates?

A. Yes, sir, but he wasn't there very often though; he didn't come there as frequently as the others.

Q. And was Mr. Hamer?

A. Mr. Hamer and Cap. Phillips, they used to drop in there occasionally.

Q. What occupation are you engaged in now?

A. Bookkeeper.

Mr. THOMAS: That's all.

Cross-examination.

By Mr. ROSE:

Q. Mr. Scott what was the particular business that took you to the Capital National Bank in September, 1891?

A. I went at Mr. Mosher's request.

Q. For what business?

Q. Well he asked me if I could raise him some more
1108 money, and he wanted to see me.

Q. How long were you in the bank at that time?

A. I wasn't in there but a minute or two, I guess.

Q. What's that?

A. Just a few minutes.

Q. You went in at the side door, did you?

A. Yes, sir.

Q. Mr. Outcalt let you in?

A. Yes, sir.

Q. How do you fix the time of that interview?

A. It was the early part of September, I don't know just what
day it was.

Q. Well I asked you how you fixed the date?

A. I fix- the date because I had just given him these notes, and
I thought it was rather strange that he should ask me for some
more money after I had given him those notes.

Q. That's the way you fix- the date?

A. Yes, sir.

Q. Did you ever keep any memorandum of that conversation?

A. No.

Q. When did you first go into the laundry business?

A. Well I had an interest in it in '86, and then I bought my
partner out in 1887.

Q. In 1886 when you acquired that interest what was your business?

A. I was in the Capital National Bank as book-keeper.

Q. What was the real cause of your severing your relations with
the Capital National Bank?

A. I left to attend to my own business.

Q. Did you have some difficulty with Mr. Outcalt before that?

A. No, I had no difficulty.

1109 Q. Never did have?

A. Not as I know of.

Q. Well you would know it if you did, wouldn't you?

A. Yes I would know it if I did.

Q. What was the origin of your indebtedness to the bank?

A. I borrowed the money to buy that property.

A. Was that the origin of all the indebtedness of yours?

A. Yes, sir.

Q. Absolutely?

A. Yes, sir.

Q. You had some difficulty with Mr. Outcalt in connection with
which you employed Mr. Newt C. Abbott as your counsel did you
not?

A. I don't remember.

Q. Is your memory pretty good or not?

A. I don't remember anything of the kind; I may have done it,
I don't remember it though.

Q. Well is it possible that you could have had a difficulty in
connection with which you would go to an attorney, and not re-
member it?

A. I may have done it; I don't know; it's so long ago, my memory isn't as good as it used to be.

Q. Would you remember it if you had abstracted moneys of the bank and covered it up by false entries in the books?

A. I would remember it if I had I should think.

Q. You would have remembered it?

A. Yes.

Q. Did you have a difficulty over that very subject with Mr. Richard C. Outcalt?

A. No, sir.

Q. And did you meet Mr. Outcalt over that subject matter in the office of Abbott, Sellick & Lane in the Burr block in the city of Lincoln about 1887 shortly before you quit the bank, in
1110 which Mr. Outcalt threatened to send you to the penitentiary for embezzlement from the Capital National Bank?

A. No sir, he never threatened anything of the kind.

Q. And did you then and there present to him some patched up remnants of paper that you had picked out of the waste basket and pasted together, to show promissory notes that had been destroyed and thrown in bits into the waste basket by C. W. Mosher?

A. No sir, I didn't.

Q. If you had any such transaction as that your memory is all gone about it?

A. Yes sir.

Q. And did you tell Mr. Outcalt at that time and place, in the presence of Newt C. Abbott, and A. W. Lane, that "if you send me to the penitentiary, I'll have company"?

A. No sir, I never made any such a remark.

Q. Let me ask you from what source did you get your means to acquire an interest in the laundry business?

A. From my salary.

Q. What was your salary?

A. I had a thousand dollars a year.

Q. Did you have any family?

A. No.

Q. Your laundry was a little shack out at 24th and "O" street, wasn't it?

A. It was out on 24th and "O".

Q. It wasn't a very large affair?

A. Well it wasn't a very small one.

Q. Right in the creek bottom there?

A. It was right on Antelope creek.

Q. That was the property that you pretended to have, is it?

A. That was the property that I had at that time.

1111 Q. And that was all you did have, wasn't it?

A. Yes,—no, that wasn't all I had. I had some lots out in South Park Addition,—five lots.

Q. Paid for?

A. Yes sir, paid or; I sold two of them and three of them I give in that mortgage.

Q. They were out towards the Asylum?

A. It was near the hospital, the St. Elizabeth's Hospital, on 10th and Charles street.

Q. And you went right into the bank and borrowed money in the ordinary commercial way?

A. Yes sir.

Q. Now, as a matter of fact, didn't you give your notes to the bank to cover the amount of an embezzlement or larceny of yourself from the bank, committed while you were a bookkeeper of the bank?

A. No sir, I gave those notes to buy that property. I bought an undivided half interest at first for \$5,000 and paid five hundred dollars down and was to pay \$500 each six months,—I bought that in August.

Q. 1886?

A. Not in August,—In July '86, and then in February I think it was, '87, I bought the other half.

Q. And when you made both purchases you were still a bookkeeper of the bank?

A. Not when I bought the second part.

Q. Weren't you a book-keeper of the bank in February, 1887.

A. Yes sir, I was a book-keeper at that time.

Q. What time did you give the mortgages?

A. I give the mortgages in May, I think it was.

Q. Have you looked up the books?

A. No sir.

1112 Q. Then you bought the property,—half of it in 1886 and a part in February, 1887, but you gave your mortgages to the bank in May, 1887?

A. Yes.

Q. And you quit your services with the bank in May, 1887 to—just before you gave the mortgages?

A. Somewhere about that time, yes sir.

Q. And the giving of the mortgages was connected with your accounts at the bank, wasn't it?

A. No sir, it was to pay for them lots; the lots were bought on five years.

Q. How did you happen to get \$18,000 borrowed in that way?

A. The lots was bought in five years time, and they loaned me the money to pay for all of them before the time expired so as to have a clear title to them, and then I sold one of the lots to the city, and another I sold to a man by the name of Crandall, and the rest I give them a mortgage on.

Q. How did you happen to have so big a mortgage as \$18,000 or such an indebtedness?

A. Well I had borrowed money before; I borrowed money to buy those lots out in South Park.

Q. You don't mean to say that you had any considerable portion of \$18,000 in any enterprise of that kind, do you?

A. The block cost \$10,500, and then the lots out there, and then I borrowed money to buy machinery to put in the laundry.

Q. At what time was it that your indebtedness was \$18,000 to this bank?

A. That was in 1891.

Q. What made it so much then?

A. Well I had borrowed money at different times, for different purposes.

Q. You mean to say that you had a good credit at this bank?

1113 A. And when I gave the mortgage it was to cover my indebtedness or any other loans I might need. I think it is so stated in the mortgage, and when I needed any money I went to Mosher and got it.

Q. What was the date when your laundry was foreclosed on?

A. Foreclosed on?

Q. Yes.

A. The lots were foreclosed on in 1893 or '4—I don't know just when the date was,—I don't remember,—I think it was 1893; I am not sure.

Q. Was it before the bank failure or after?

A. After.

Q. Have you looked up the records to ascertain recently?

A. No sir.

Q. Who was it that sued you in that case?

A. I don't know who it was,—I was sued on these notes.

Q. By the Capital National Bank of Lincoln?

A. I don't know whether it was them or the receiver. The Receiver, I think.

Q. The foreclosure of your mortgage?

A. The mortgage was foreclosed by the party who held the note; I think it was some bank back east.

Q. It was purchased in by the Capital National Bank, wasn't it?

A. What was?

Q. The laundry property out there and afterwards sold to Crandall?

A. It wasn't sold to Crandall; there was only one lot sold to Crandall?

Q. Well it was a part of the property foreclosed?

A. No, the lot was sold to Crandall long before the property was foreclosed.

Q. Who sold it to Crandall?

1114 A. I did.

Q. Where did the purchase money go to?

A. It went to the bank to apply on my notes.

Q. Went to the Capital National Bank?

A. Yes sir.

Q. Wasn't your mortgage to the bank, in fact, a deed?

A. I gave them a warranty deed at one time, and then give the mortgage.

Q. You conveyed it by warranty deed to them,—when did you do that?

Q. That was in 1887 I think,—I believe it was in 1887.

Q. What time in 1887?

A. In,—I think it was in May, I believe.

Q. You gave the deed just about the time you wuit the bank didn't you?

A. Yes.

Q. And you gave the deed under pressure to-, didn't you?

A. No sir.

Q. Now you said you couldn't remember whether you might have had the trouble with Outcalt that I referred to, but since I have mentioned it and called up these old things, can you remember it now?

A. No sir.

Q. How old a man are you, Mr. Scott?

A. Seventy.

Q. Just seventy?

A. Yes.

Q. Who are you keeping books for now?

A. Newberg & Brookson.

Q. What's their business?

A. Plumbing.

Q. You never had any credit anywhere else, outside of the Capital National Bank, did you?

1115 A. I never borrowed money anywhere else, if that's what you mean.

Q. Never could borrow money anywhere else, except in little dribs could you?

A. I never tried; I suppose I could if I had tried; my credit is good in Lincoln.

Q. Do you pretend to say that your credit was ever good in Lincoln?

A. My credit was always good in Lincoln; I always pay my bills.

Q. Where have you lived since, 1887?

A. Lived in Lincoln the most of the time.

Q. Where have you lived when you were not there?

A. Just on the outskirts when I wasn't right in the city.

A. Out in the country somewhere?

A. Out east of Lincoln three or four miles.

Q. Did you live alone?

A. No, I was out there keeping books for Tabitha Home for ten years.

Q. Tabitha Home for ten years,—that's a charitable institution, isn't it?

A. Yes.

Q. Were you working for wages, or an inmate of the institution?

A. I was working for wages.

Q. How much wages did you get there?

A. I got ten dollars a month and my board.

Q. Mr. Scott, did you have a speaking acquaintance with Mr. Thompson while you were in the bank there?

A. Speaking acquaintance,—I used to speak to him sometimes.

1116 Q. Ever have a conversation with him?

A. No, not any particular conversation.

Q. You say Mr. Thompson was sometimes there—did he make his headquarters there in '86 and '87?

A. I couldn't say he made his headquarters there. He wasn't there often enough for that.

Q. Did he go in back of the counter where the bookkeepers did their work?

A. No, I don't think he did,—I don't remember.

Q. Did you ever see him in back there looking over your work or checking you up?

A. He never looked over my work, no.

Q. Did you ever see him looking over anybody's work?

A. I couldn't say I did.

Q. Who were the officers in immediate charge of the bank?

A. Mosher and Outcalt.

Q. Who hired and discharged the clerks and directed them in their work?

A. Mosher.

Q. What day was it that you were up here looking over these books?

A. Up here?

Q. Yes.

A. I forget what day it was; a few weeks ago.

Q. Can you give the month or the year,—this year or last year?

A. It was this year.

Q. Since the first of January?

A. I think it was.

Q. Who paid your expenses for coming up here?

A. I paid them myself.

Q. Paid your expenses, and came up on your own time, did you?

A. Yes sir, came up on my time.

1117 Q. As a gratuity, and got no pay for it?

A. I got paid for my time after I got here.

Q. But not for your expenses?

A. My time and expenses, yes sir.

Q. Who paid you for it.

A. Mr. Jones.

Q. How many days were you here?

A. One.

Q. What was the total sum you received?

A. Five dollars and my expenses.

Q. How long have you been here on this trip?

A. I just got here this noon.

Q. Who paid your expenses this time?

A. I paid them myself, so far.

Q. You have received no pay so far.

A. I have received no pay so far.

Q. Any promise of any pay?

A. No, I am not promised any.

Q. Who requested you to come here?

A. Mr. Jones.

Q. When did you get acquainted with Mr. Jones?

A. I got acquainted with him when he used to do business with the bank first.

Q. Well when did you see him with reference to this particular matter here?

A. I saw him one day up in Lincoln.

Q. Where?

A. On the street; I met him and we got to talking about the old Capital National Bank; I didn't know there was anything on here,— I thought it was all settled and done for long ago.

Q. Did you just casually meet him on the street?

A. He told me something I didn't believe, and he said he
1118 had the books and could show me, and I said I would like to see them books, I have never seen them since the bank closed, and he said if you will come up I will show you.

Q. And then you came up.

A. Then I came up.

Q. What help did Mr. Jones give you in fixing the date of this supposed meeting with Mosher and Outcalt in the back of the bank?

A. He didn't give me any help.

Q. Not the first bit?

A. No.

Q. Did he tell you the date that Mr. Thompson sold his stock or anything of that kind?

A. No.

Q. Never a word about that?

A. No.

Q. It just rolled out of you and you remembered after these twenty years that that was in September, 1891?

A. Yes.

Q. You remembered that just right easy?

A. I remember things further back than that.

Q. You remember the date and everything.

A. No I don't remember the date; I remember it was the early part of September, but what day I don't know.

Q. What business were you engaged in in 1891?

A. The laundry business.

Q. Who else,—did you get to see *in to see* who was in the bank at that time?

A. I saw some of them; I couldn't see them all, but I didn't go into the private room.

Q. Was Mr. Charles Yates there?

A. I didn't say he was there; I think he was there, I am not sure.

1119 Q. In understood you to say that Mr. Yates was there, and Mr. Walsh.

A. No, I said Mr. Walsh and Mr. A. P. S. Stuart, and Outcalt, Mosher and D. E. Thompson, I believe. There were others there; I didn't see Mr. Yates; I don't know whether he was there or not; I didn't see him, he might have been there.

Q. What do you think about it,—couldn't you remember him as well as you could the others?

A. Well I didn't see him. I just told you those that I saw when they opened the door.

Q. Was there any counter or partition between the back entrance and the front entrance?

A. Yes sir, there was a partition across there.

Q. And you looked over the partition?

A. Well it was a ground glass partition,—the top was ground glass and the bottom frame.

Q. Were those people assembled out in the lobby, or in the President's room?

A. They were in the back room; the president's room was in the front.

Q. I don't get your proposition as to where they were.

A. They were in the private room in the back there.

Q. A private room in the back?

A. Yes.

Q. How does it come that you remembered that they were in the front room when you first said it?

A. I didn't say anything about them being in the front room; I said I was let in at the side door by Mr. Outcalt, and this room was on the south side of the building,—south end of the bank; the bank faced north.

Q. Did you go right into the bunch of them yourself?

A. No, I didn't.

1120 Q. How close were you to them?

A. I went at the side door, and then there is,—there was a partition along there, and then across the end there's another partition, and there's a private room there and back of that is a vault where they kept the safety deposit boxes in.

Q. Where were those people?

A. They were in the room this side of the vault.

Q. They weren't in the vault?

A. No, not in the vault.

Q. And were they inside of the railing back where the employes of the bank were?

A. I told you there's a frame partition with glass on top, and a door that goes into that private room; I couldn't see who was in there until they opened the door; there was more in there than I saw; I wasn't any further from the door than I am to you.

Q. And you could see right through?

A. The door was open.

Q. And everybody could see you just the same?

A. I don't know whether they saw me or not; I didn't pay any attention.

Q. But they could see you?

A. They could have, I guess.

Q. Who were you with while you were in the room there; who were you talking to while you were in the bank room there on that occasion?

A. I talked with Mosher.

Q. Anybody else?

A. No.

Q. When Outcalt let you in how long an interval was it until Mosher came to see you?

A. Why Outcalt called him out?

Q. Immediately?

A. Yes.

1121 Q. How long were you in there?

A. I wasn't in the bank I shouldn't think over two or three minutes all together.

Q. How near to the entrance door were you?

A. The side door?

Q. Yes.

A. Why I was close to it.

Q. You said it was after banking hours? What hour was it?

A. I don't know just what hour it was; it was near six o'clock I think.

Q. You didn't make a payment to Mosher that night did you?

A. No.

Q. And you have no way on earth of fixing the date?

A. No sir, I don't remember just what the day was.

Q. What made you think it was a Directors' meeting then?

A. Because I heard them talking about something about it when I went in; they were talking pretty loud; they seemed to be quarreling about something or other, and I supposed it was a Directors' meeting from the number of directors that was there; that's why I didn't stay any longer.

Q. You were afraid you might hear something if you stayed?

A. Well I just spoke to Mosher and had a little conversation with him and left.

Q. What was your conversation with him?

A. He asked me if I could raise him some more money, and I told him I couldn't.

Q. Then what did he say?

A. He didn't say anything.

Q. What did you say further?

A. I didn't say anything, I went away.

Q. That's the entire conversation between you and Mosher?

A. Yes sir.

1122 Q. And that's the entire conversation you had with anybody while you were in there?

A. That's all the conversation I had, yes sir; I didn't go in to see anybody else; I went in to see Mosher, and as soon as I saw him I came out.

Q. Are you getting any additional funds for this testimony in respect to overhearing this conversation by Mr. Thompson there in the bank?

A. Am I paid?

Q. Yes; do you get pay from Mr. Jones or anybody else for that?

A. No.

Q. You have had no personal dealings with Dr. Hamer or Mr. Yates, or Mr. Thompson, the defendants in this case, at any time, have you?

A. No sir.

Q. And never have had?

A. Never had any dealings with any of them as I know of.

Q. Did you hear Mr. Thompson make any mention of what it was that he thought was rotten?

A. He just said he thought the thing was rotten all through and he would get out of it.

Q. What was it he referred to,—you didn't catch what he referred to did you?

A. No.

Q. And you don't know to this day what he referred to?

A. No, I don't; I supposed it was about the bank.

Q. You didn't hear him say anything more than that?

A. No sir; I wasn't in there only as I told you, just about two or three minutes.

Q. He was rolling it *rougt* out boisterously, was he?

A. He was angry about something.

1123 Q. You don't pretend to know what it was?

A. No sir, I don't.

Q. Well now, Mr. Scott, this little room in the back part of the bank, was that a little room used for entry to the safety deposit boxes?

A. Yes sir.

Q. Used for and by the customers of the bank?

A. Yes.

Q. Were you ever in that bank at any other time, when you gathered that there was a directors' meeting in progress?

A. No sir.

Q. All the time you were there did you ever see the directors meet in that room at any other time?

A. No sir.

Q. Were you about the bank long enough to know at what point in the bank the directors, when they had meetings, always assembled?

A. I don't know that they had any meetings, or where they assembled.

Q. But you do know you never saw them assembled in that room before?

A. I never saw them assembled in any room; I never saw them before.

Q. Did they have a room up in front that was more spacious and a better room for that purpose?

A. They had a room in front to-, yes sir.

Q. When you saw Professor Stuart, and Dr. Hamer, and Mr. Holmes and the officers of the bank,—you saw them come in and go about the bank frequently you say,—now what room did they enter,—the front room or the back room?

A. Sometimes one and sometimes the other.

1124 Q. Sometimes they had occasion to enter the vaults in their interviews with the officers, Mosher and Outcalt?

A. Well Outcalt was in the cashier's cage most of the time, and Mosher was in front there in the president's room.

Q. You never saw these directors go into the president's room I suppose.

A. Oh,—that is, I never seen them hold a meeting there; I have seen them go in and out there.

Q. And you never saw them hold a meeting in that bank until six years after you had severed your relationship with the bank?

A. Yes sir,—four years.

Q. Yes about four years. Have you any data from which you could refresh your recollection and say when it was that your mortgage that you refer to was foreclosed against you?

A. When the mortgage was foreclosed?

Q. Yes, the mortgage on the laundry.

A. It was sometime in 1891; I don't remember just what time it was.

Q. Then it was about two years,—from one to two years before the failure of the bank, as a matter of fact?

A. No,—it was somewhere in 1893 or '4 I said.

Q. But when I asked you again you said 1891.

A. Well it was '91—

Q. You are correcting it now because you found that this answer was inconsistent with the other?

A. Well I don't remember; that was a long time ago and of course I couldn't remember everything; I am getting old now.

Q. Do you know what the description of your lots were?

A. Which lots?

Q. The lots that you mortgaged to the Capital National Bank—the "O" street lots?

A. The "O" street lots; it was block,—a block in Kinney's 1125 "O" street addition; I don't know the number of the lots, except the one I sold to Crandall and one I sold to the city; I don't know what the numbers were that I sold,—I don't remember.

Q. I understood you a while ago to say that you deeded it all in 1887,—just at the time you quit the bank?

A. I deed- it all to the bank before any of them was sold.

Q. And when ant of them were sold the purchase price was paid to the bank?

A. Yes sir, it was paid to the bank.

Q. You were very much in Mr. Mosher's confidence while you were in the bank there?

A. Well we used to be good friends, yes; we both had stock in the ball game, and used to go out to the ball game pretty often.

Q. Your team won the pennant one year?

A. Yes.

Q. You mentioned some of the directors of that bank who were officers,—do you know any of them who are alive now?

A. I don't know,—some of them are dead, and some of them are living I think.

Q. Was Mr. Yates a director?

A. Yes sir, he was one of the directors.

Q. Was Mr. Thompson?

A. Yes.

Q. Was Mr. Hamer?

A. Yes.

Q. And Mr. Holmes?

A. W. W. Holmes, yes sir.

Q. Did you know Mr. Charles E. Yates?

A. I don't know what his initials are.

Q. C. E. Yates.

A. He was Superintendent of the telegraphs of the B. & M.

1126 Q. You knew him?

A. Yes sir.

Q. Did you ever talk to him about your defalcation in that bank?

A. No.

Q. Or with Mr. D. E. Thompson?

A. No.

Q. You never talked to anybody but Outcalt and Mosher?

A. Talked about what?

Q. Did you talk to Outcalt about your defalcation in 1887?

A. No.

Q. You still can't recall that?

A. No.

Q. Did you ever talk to Mosher about it?

A. No.

Q. Did you ever check Mosher up on any of his paper in that bank, while you were bookkeeper?

A. Check him up?

Q. Yes.

A. I called his attention to one thing there once.

Q. What was that?

A. I saw a report in the paper of the statement of the bank I noticed he got the deposit account fifty thousand dollars more than it was on my books, and I asked him about it.

Q. Did he explain it to you?

A. Yes.

Q. Showed you what made up the difference?

A. He told me he didn't want to be underneath the State Bank, he said they increased their deposits, and so he put that fifty thousand on his so it would show they had a bigger deposit than the State.

Q. Did you ever check him up on his notes?

A. No.

1127 Q. Do you recall of carrying around in your pocket some notes that Mr. Mosher had torn up, the pieces of which you had assembled and pasted together?

A. I never had no notes of Mosher's.

Q. Notes that he had destroyed?

A. No sir.

Q. Did you in the presence of W. A. Sellick, or in the presence of N. C. Abbott, or A. W. Lane, in the office of Abbott, Sellick & Lane in the Burr Block, in 1887, in Lincoln, Nebraska, have an

interview with Richard C. Outcalt, then the cashier of the Capital National Bank, and now deceased, touching an alleged shortage of yourself with the Capital National Bank, in which Mr. Outcalt told you that if you didn't straighten it up that he would send you to the penitentiary, and at which conversation you presented to him the torn bits of a note that apparently had been assembled by yourself and pasted together and say to Mr. Outcalt, "I don't think you will send me to the penitentiary,—you can see this, and if you send me there I will have company", or words to that effect?

A. I never said anything of the kind to Mr. Outcalt at no time.

Q. Did any such an occurrence at any time take place in the Office of Abbott, Sellick & Lane, in Lincoln, Nebraska?

A. Not that I know of.

Q. Do you remember of having co-nseled with Abbott, Sellick & Lane or any member of that firm?

A. Not on those things.

Q. You were counselling them were you not, about that time, about something?

A. They were my attorneys, and used to do my business when I had any.

Q. Did this conversation take place in the presence of Richard C. Outcalt that I am challenging your attention, to, and
1128 did it happen to be in their office?

A. I don't remember it.

Q. You don't remember it?

A. No.

Q. Do you dent that such an occurrence did take place absolutely?

A. I do.

By the COURT:

Q. Were you ever short in your accounts at the bank while you were bookkeeper, or were you ever accused of dishonesty by any officers of the bank while you served in that capacity?

A. No sir.

Q. What was the fair market value of the laundry property which you say you mortgaged to the bank for ten thousand dollars, and which was foreclosed,—sold upon foreclosure?

A. Well there was a whole block of lots on "O" street; I was offered twenty five thousand dollars for it one time and refused it. And there is the laundry building,—brick and stone 40 x 80,—the stone part 20 x 80 and two stories high, and about five thousand dollars' worth of laundry machinery in there.

Q. What did you pay for the laundry when you first bought it?

A. When I first bought it, I bought a half interest in it and paid \$500, and then I bought my partner out, and I went to Chicago,—that's why I borrowed money from Mosher—to buy about \$5,000 worth of new machinery. The hotels in Lincoln used to have their own laundry and I bought new machinery so as to do that kind of work, and then I went around to the hotels and got them to give me their work because I could do it cheaper than they could run their own laundry.

1129 Q. You said you bought a half interest for \$500?

A. Yes sir, it was a little bit of a place between 11th and 12th on "O" street, and then the lease run out and I had to get another building and I bought that property on "O" street, and moved the laundry there, and then I went to Chicago and bought new machinery.

Q. What did you pay for half interest in the laundry in the first instance?

A. \$500.

Q. How did it come to be worth a sufficient amount to justify a loan of \$10,000?

A. It wasn't on the laundry alone; it was on the whole of them lots and the three lots out in South Park; it was 18 lots.

Q. How much of your paper was finally left unpaid, while the bank was in the hands of the Receiver?

A. Those two \$6,500 notes; they was to run five years.

Q. You claim to have paid those by this mortgage?

A. Yes sir.

By Mr. THOMAS:

Q. When you bought the half interest in that block, how much were you to pay for that?

A. I paid \$5,000 for the first half; \$500 down which I paid and I was to pay \$500 each year for the balance until it was paid, and then afterwards I bought the other half interest,—it was an undivided interest and I paid \$5,500 for that, and I paid \$500 down, and was to pay \$500 every six months for the balance. Well then Mosher and I was talking it over one day and I said I had a chance to sell one of those lots to the city, but they wanted a clear title for it, and he agreed to loan me the money to pay those notes off. I wrote to the party and asked them if they would accept the 1130 money for the notes, instead of letting them run the five years, and they wouldn't accept the money unless I paid the whole of the interest, and I finally paid the whole of the interest and the balance of the money to clear the lots.

Q. And what buildings were there on them when you bought the lots?

A. This old building that used to be an old soap works, and it was full of soap vats and it cost me about \$5,100 to fit it up for the laundry; I had to take them old soap vats out, and remodel the entire building; it had been vacant for years, and I bought it and moved the laundry down there; I couldn't rent a building in Lincoln at that time, and I had to buy or sell the laundry machinery at a sacrifice, so I bought that building and remodeled it and moved it down there, and I borrowed the money from Mosher for all those things.

Q. You say you went to Chicago and bought this machinery, about \$5,000 worth? When was this?

A. I think it was in October, 1887,—October or November, I don't remember just exactly, and I bought all new machinery and then I went around to the hotels and I says "How much does it cost

you to run your laundry", and they says what do you want to know for? "Well," I says "maybe I can save you some money" and Imhoff was one I talked to, and he said he would figure it up and see and let me know, and so I went around again and he said it cost him about \$300 a month to run his laundry and I told him if he would give it to me I would do it for \$200 a month, and he could send any amount of it he wanted to; and I went to the Windsor hotel, and went to the Tremont, and I went to every hotel in town and got every hotel in town, and to the Lincoln, and I had to buy the Lincoln machinery because they wouldn't give me the work unless I would buy the machinery, and he made me pay just what 1131 he gave for the machinery when it was new, and I threw it in the scrap pile after I bought it.

Q. Then in 1887 this deed was taken in whose name?

A. Well Mr. Thompson let me have the B & M car work and I used to do their work, and he afterwards came to me and asked me if I could get out the Beatrice work, and I says "I can get it back to you the same evening if you will get it up to me in the morning".—

Q. Now the deed, Mr. Scott, in whose name was the deed taken after Mosher loaned you the money to pay off the notes and get this title clear, and you sold this lot to the city, and so forth, in whose name was the deed taken at that time?

A. It was taken I believe in Outcalt's name,—I don't remember, either Mosher's or Outcalt's.

Q. Well then was it afterwards deeded back to your wife or to you?

A. It was deeded back to me and my wife at the time I give him those two \$6,500 notes, and paid him a little over \$5,000 in money; I was owing him a little over \$18,000 at that time, and I give him these two \$6,500 notes to run five years, and I paid him the difference in cash.

Q. Do you know what the lots that were sold to the city and this other gentleman, what they brought?

A. The city paid me \$2,500; I sold them the lot at about half what it was considered worth at that time, because I had no fire protection down there, and I wanted them to come down there with the city engine house.

Q. And did they afterwards put a city engine house on that lot?

A. Yes sir, and it is there yet, and that was applied on the notes, and then I sold the other lot to Crandall for \$4,500 cash and some trade, and that cash was paid into the bank to apply on the notes to.

1132 Q. Now were you on friendly terms with Mosher after you went out of the bank?

A. Yes sir, we was always on good terms.

Q. Was that when you did your borrowing?

A. Yes sir.

Q. When was it you were interested in the same ball team,—was that after you went out of the bank?

A. No, that was while I was in the bank. Mosher was really

the owner of the team although he didn't figure as such, and he asked me if I would take some stock in it and I told him Yes, and I took some; we used to go out to the games together; sometimes I would ride out in his carriage, and sometimes he would ride out in mine; it was one day we was driving out there that he told me how he come to go into the banking business.

Q. Was that while you were in the laundry business?

A. No, I didn't have anything to do with the laundry business then,—that was before. I didn't get interested in the laundry business until '86.

Q. Now where did you first see Mr. Jones?

A. I saw him up in Lincoln,—met him on the street.

Q. And what was the conversation there with Mr. Jones?

A. I hadn't seen him since I left the bank and I met him on the street, and we got to talking and he told me about this,—we got to talking about the Capital National Bank at the time I met him; I didn't know that he had anything to do with it or had any case; I thought the Capital National Bank business was all settled and done with; I didn't want to be mixed up in it, and he made some statements there and I wouldn't credit them. "Well" he says, "I have

got the books up here" he says, "and I can prove it". I didn't believe it. Well, he says, if you will come down to Seward, he says, I will show you the books. I says All right, I will come down, I would like to see them books, I haven't seen them since I have been out of the bank, and I came up here and he showed me and verified what he had said.

Q. At that time had you ever said anything to him about this meeting of the directors in September, 1891?

A. No, I hadn't said anything to him about it.

Q. How did you come to tell him about it?

A. I told him about it afterwards when I came out here; when I saw the books I told him about that, and then I didn't know that I was going to be called as a witness; they served papers on me while I was here, or I wouldn't have to come.

Q. Well was there anything that Mr. Jones or anybody else ever said or suggested to you about that meeting of the directors in September, 1891?

A. No.

Q. Did Mr. Jones or anyone else suggest that to you?

A. No sir.

Q. How did it happen to come up, were you simply narrating your history from the time you came to Lincoln?

A. We was having a general conversation about the bank, and I told him some things about that; if I had known there was any case coming up, why I wouldn't have told him, that's all there is to it; I didn't want to be drawn into it.

Q. What I was getting at was how you happened to tell those things?

A. Oh, just in general conversation; we got to talking about the old Capital National Bank matters, and I thought it was all finished

and wound up. I didn't know there was any case down here; I didn't know until I came down here,—until they served papers on me while I was down here.

1134 By Mr. ROSE:

Q. Just to straighten you on your indebtedness. Did you give this mortgage before you sold your lot for a fire station and your lot to Crandall?

A. Yes sir, I think I did; the first mortgage.

Q. I thought you only gave one mortgage?

A. I gave two or three mortgages there.

Q. Well when your indebtedness was \$18,000.

A. At that time, that's the time I gave them the last mortgage,—that was in 1891.

Q. You gave them a mortgage then of how much?

A. He had a previous mortgage to that which he released at that time, or rather he had a warranty deed, and he deeded the property back to my wife and me and then I gave him a mortgage for ten thousand dollars; he said they had to have some money and I said I couldn't raise any money; I says "I can't raise money these hard times," and he said,—

Q. I don't care anything about those details. You say that when you gave the two \$6,500 notes your indebtedness to the bank was \$18,000 or upwards, is that right?

Q. Yes sir.

Q. After that you sold the lot to the city, did you?

A. No sir, before that.

Q. How much did you get from the city?

A. Twenty five hundred dollars.

Q. And from Crandall?

A. Forty five hundred dollars.

Q. That's seven thousand dollars.

A. Yes.

Q. Then had your previous indebtedness been as high as twenty-three thousand dollars, or such a matter as that?

A. I don't know what it was, because I don't remember.

1135 Q. It must have been.

A. No, I borrowed money after that from them;—you see I borrowed money to buy those lots,—to clear the title.

Q. Yes, but you borrowed that at the time they took the deed. They took the deed as security, I understood, for that. That's correct, isn't it?

A. I borrowed that before the lots were sold to the city because I had to clear the title before I could sell to the city and Crandall.

Q. Then after having borrowed that money you paid the proceeds of those two lots, seven thousand dollars to the bank?

A. Yes sir.

Q. And you still had \$18,000 left, on which you paid \$5,000?

A. Yes sir, I paid a little over five thousand at the time I gave the notes for \$6,500 each.

Q. Now do you remember the transaction;—can you remember the details of those changes?

A. How do you mean?

Q. Do you remember the number of mortgages you gave, the dates and the number of payments you made on them?

Q. I gave the mortgage then for ten thousand at the time I give the notes, two \$6,500 notes; they were to run five years.

Q. Now Mr. Scott, you have testified that you paid the bank seven thousand dollars as the proceeds of the sale of two lots; that you also paid five thousand dollars to reduce your indebtedness of eighteen thousand dollars and that you had still left thirteen thousand and upwards in two notes to the bank?

A. Yes, sir.

Q. That would make the aggregate of your indebtedness run up to twenty five thousand dollars. Did you ever owe that much to the bank at one time?

1136 A. I don't know just how much I did owe them; I had given a number of notes; I had notes at the bank there that I had paid for over thirty thousand dollars; I think you have got some of those notes,—(to counsel for plaintiffs.)

Mr. ROSE: That is all.

By Mr. THOMAS:

Q. That sale to Mr. Crandall and to the city, how many years was that before these two \$6,500 notes were given?

A. Oh that was sometime before,—a year or two before that was given.

Q. And was that Crandall lot all paid in money, or part of it in trade?

A. He paid \$4,500 in cash and I got some trade in with it; I got some equities in some farms down in Kansas which I afterwards traded away, but the cash went into the bank; it was paid into the bank; that was the agreement when I give the warranty deed, that any lot I sold;—I was to sell any lot and fix my own price and the money was to be paid into the bank to apply on what I owed the bank.

Witness excused.

1137 H. T. JONES, recalled:

Direct examination.

By Mr. THOMAS:

Q. Mr. Jones, how long have you lived in Seward, Nebraska?

A. Since, July, 1873.

Q. During that time were you connected with the Jones National Bank, the plaintiff in one of these cases that is being tried at this time?

A. I was.

Q. During what time were you connected with the bank, and in what capacity?

A. The bank commenced business in November, 1884; I was cashier from the organization of the bank until 1896; at that time I was elected President and was president of the bank until November, 1908.

Q. And while you were cashier of the bank who was president?

A. Claudius Jones, my father.

Q. And who had active charge of the bank?

A. In reality I had from the time the bank was organized to the time that I sold out.

Q. And during that period did the Jones National Bank do business, or keep a deposit with the Capital National Bank of Lincoln?

A. Part of the time it did.

Q. You may state when it began doing business with the Capital National Bank?

A. In June, 1885, and continued to do business from that time up to the suspension of the Capital National Bank, January 21, 1893.

Q. Do you know how much money the Jones National Bank had on deposit with the Capital National Bank, which was unpaid and that the Capital National Bank was owing to the Jones National at the time of the failure of the Capital National?

A. I do.

1138 Q. You may state what that amount was.

A. In the way of an explanation I would like to put it this way; on January 21, 1893 when the bank closed, the bank books of the Jones National Bank showed out balance to be \$12,529.23, but the books of the Capital National showed it to be \$17,529.23. This difference of \$5,000 came about in this way—on January 15th, 1893 I requested the Capital National bank to remit the Chemical National Bank of New York, for the credit of the Jones National Bank \$5,000. They reported to me on the following day, which was the 16th, that they had so remitted, but they never did.

Q. Is Exhibit X-1054 the card you speak of as having contained a report of the remittance to New York?

A. It is.

Q. When did you say that was received?

A. January 16th, 1893.

Q. And what does that indicate; what do the notations on the card mean?

A. The card states that they have remitted New York, \$5000.

Q. And was that the regular method that the bank pursued, to notify your bank of transactions of that character?

A. It is and was.

Mr. THOMAS: We offer in evidence, Exhibit No. X-1054.
Received without objection.

C. W. Mosher President. H. J. Walsh, Vice-President.
R. C. Outcalt, Cashier.

Capital National Bank.

LINCOLN, Neb., 1/16, 1893.

Yours of — Received, with Enclosures as Stated.

Credited.	Entered for collection.	We remit:
Exhibit	Ex. 1054	New York \$5000
"X-1054	O. P. H.	Chicago \$.
		Omaha \$.
		Currency \$.
		Silver \$.

This Bank, in receiving collections elsewhere than in Lincoln, Acts only as your agent and assumes no responsibility beyond that of due diligence on its part.

Yours respectfully,

R. C. OUTCALT, *Cashier.*

[Admitted to:] Jones Nat. Bank, Seward, Neb.

1139 Q. And upon receipt of that card did you send any money to the Capital National Bank?

A. Thereabouts. I did; on the 19th day of January I sent them \$5,000 in gold, and they were kind enough to receipt for it the day before they closed the doors.

Q. And have you that receipt—is Exhibit No. X-1055 the receipt from them acknowledging the receipt of the \$5,000 in gold?

A. It is.

Q. Was that received by you or your bank at about the time it purports to be dated?

A. It was.

Q. And was that the common method and custom of notifying your bank of such transactions?

A. It was.

Mr. THOMAS: We offer in evidence Exhibit X-1055.

Received without objection.

C. W. Mosher, President. H. J. Walsh, Vice President.
R. C. Outcalt, Cashier.

Capital National Bank.

LINCOLN, Neb., 1/19, 1893.

Yours of 1/19—Received, with enclosures as stated

Credited.		Entered for collection.	We remit:
Exhibit	Gold	New York,	\$.....
5000		Chicago	\$.....
X-1055	Ex. 1055	Omaha	\$.....
		Currency	\$.....
	O. P. H.	Silver	\$.....

This Bank, in receiving collections elsewhere than in Lincoln, acts only as your agent and assumes no responsibility beyond that of due diligence on its part.

Yours respectfully,

R. C. OUTCALT, *Cashier*.

[Addressed as follows:] Jones Nat. Bank, Seward, Neb.

1140 Q. Do you remember of the time that the Capital National Bank failed and went into the hands of a receiver?

A. I do.

Q. I presume you filed your claim on behalf of the bank?

A. I did.

Q. And can you tell us now the amount of money that the Capital National Bank was indebted to the Jones National Bank on the 21st day of January, 1893, the day it closed its doors?

A. I was forced to accept the amount as shown by their books, in place of ours in that way, and duplicate receiver's receipt for the amount \$17,529.23, Receivership No. 1009.

Q. Is that the amount that the Jones National Bank had on deposit with the Capital National bank at the date of the latter's failure?

A. According to the books of the Capital National Bank. According to the books of the Jones National it was \$5,000 less than that.

Q. That was on account of their failure to remit to New York as you have testified?

A. Yes, sir.

Q. Then what did they actually owe your bank?

A. The amount of the Receiver's receipt, the way they forced me to accept it.

Q. Were there any dividends paid on that, Mr. Jones?

A. There were three.

Q. Can you give the date of those dividends and the amount?

A. I can.

Q. You may state.

A. September, 1893, ten per cent; May, 1894, five per cent; July, 1901, two per cent.

Q. Was that the dividend that was paid through the Receivership proceedings—that was paid you by the Receiver of the 1141 Capital National Bank?

A. Yes, sir.

Q. Have you received any other or further payments from the Receivership than those three dividends?

A. No, sir.

Q. Now, Mr. Jones, before you made any deposits in that bank, and after you had begun doing business with the Capital National Bank, did you see any statements of its condition, that is, of its assets and liabilities?

Mr. ROSE: Each of the defendants objects as too remote; incompetent, irrelevant and immaterial, and not a matter that is pleaded.

Objection overruled.

Each of the defendants excepts.

A. I received statements before, and all the time during the period in which we had an account in the Capital National Bank, up to the time it suspended.

Mr. ROSE: Each of the defendants move to strike out the answer as not responsive.

Motion overruled.

Each of the defendants excepts.

Q. Now you speak of seeing statements—now where did you see statements of the Capital National Bank's condition—in the newspapers or where?

Mr. ROSE: Each of the defendants object- as immaterial.

Objection overruled.

Each if the defendants excepts.

A. I saw them in newspapers and what I term printed slips and on Capital National Bank business cards.

Q. In what newspapers did you see statements of its financial condition?

A. The Nebraska State Journal and the Lincoln Daily Call.

Q. You may state how often those statements appeared in the newspapers.

A. About five times a year.

1142 Q. And during the time that your bank did business with the Capital National Bank did you see all of the statements that came out, as they were called for by the Comptroller of the Currency?

A. I did.

Q. Now what was the custom and practice of the Capital National Bank with reference to sending out statements of its condition to its customers?

Mr. ROSE: Each of the defendants objects as incompetent and immaterial, and the witness not qualified to answer.

Objection overruled.

Each of the defendants excepts.

A. The Jones National Bank always received statements from the Capital National Bank immediately upon the publication of a statement.

Q. And in what form did those reach the bank, and through what medium?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial under the issues.

Objection overruled.

Each of the defendants excepts.

A. We received them from the bank in two forms; one is what I call on a printed slip; what I mean by that is, as the form would appear in the newspaper that same form would be printed on slips of paper, like the one I hold in my hand. The one I refer to on a business card was of the same date but in a more condense- form and usually the statement would bear the name of all the directors of the bank; on the opposite side of this card——

Mr. ROSE: Each of the defendants object- to this as not the
1143 best evidence.

Objection overruled.

Each of the defendants excepts.

A. —appeared a cut of the bank building, the name of the bank, the amount of capital stock, surplus and the names of the officers.

Q. Now the slips you refer to, in what form were they printed?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not the best evidence; no foundation laid and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. They were printed in the form exactly as published in the newspapers.

Q. And the cards you say were in a more condense- form?

A. Yes, sir, by that I mean on the card under the head of cash would be included the actual cash, cash items and the amounts in their correspondent banks subject to check or draft by the bank, and on the opposite side under the head of deposits would appear all the deposits including the individual deposits subject to check, the time certificates of deposit, the demand certificates of deposit and the country bank deposits.

Q. Now what did you do with those statements when they reached your bank, Mr. Jones?

A. I would always examine them, and see the condition of the bank—that is a rule not only with the Capital National Bank, but with all banks with which we done business; it was the only method

that the bank has of ascertaining the exact condition of the banks with which it is doing business.

1144 Q. And did you preserve those cards and slips for any length of time?

A. Yes, sir.

Q. Have you any of them now?

A. I have not.

Q. What became of them, Mr. Jones?

A. At the time that we removed our office from the old location to the Tissue block, the older ones, or most all of them were destroyed. We saved a certain amount of them—didn't know but what we would use them when this case was tried before, and I have never seen any of them since.

Q. Have you made search for them?

A. I have.

Q. Made diligent search?

A. Yes, sir, I tried my best to find them.

Q. Did you succeed in finding any of them?

A. I did not.

Q. You say you saw all of the statements that were published, which were five a year, from the time your bank commenced doing business with the Capital National Bank. Now what did those slips, and published statements and cards indicate with reference to the condition of the Capital National Bank, as to whether it was solvent or otherwise, or whether it was prosperous or otherwise?

Mr. ROSE: Each of the defendants object to that as incompetent, irrelevant and immaterial, and certainly not a matter of expert testimony without giving us reference to the card or anything of that sort.

Objection sustained.

Plaintiffs except.

1145 Q. Now what did the reports and statements that you have referred to show with reference to the assets and liabilities of the Capital National Bank?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not foundation laid; not the best evidence, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. Every statement showed the bank to be not only solvent but in a good flourishing condition.

Mr. ROSE: Each of the defendants move to strike out the answer as not responsive to the interrogatory, and as giving a mere conclusion and not any fact, and as incompetent, irrelevant and immaterial.

Motion sustained.

Plaintiffs except.

Q. How was the condition of the bank indicated?

A. You mean the form of the statement?

Q. Yes, sir.

A. On one side was the resources, and on the other side was the liabilities.

Q. And what was contained, in a general way, among the list of resources?

Mr. ROSE: Each of the defendants object as to any question as to what was contained in it in a general way as incompetent, irrelevant and immaterial; no foundation laid and not within the issues.

Objection overruled.

Each of the defendants excepts.

1146 A. It showed the amount of the capital stock,—

Q. I mean among the resources.

A. It showed the loans and discounts, and the cash and cash items, and how the capital stock and deposits of the bank were invested.

Q. What did it show on the other side, which is labelled liabilities?

Mr. ROSE: Each of the defendants objects as not the best evidence, incompetent, irrelevant and immaterial; no foundation laid, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. It showed the amount of the capital stock, the surplus, the undivided profits and the amount of deposits.

Q. And what did those reports show with reference to the capital stock from the time that the capital stock became \$300,000?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid; not the best evidence and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. It always showed the sum of \$300,000.

Q. Did it show that the capital stock was impaired or otherwise?

Mr. ROSE: Each of the defendants object as incompetent, irrelevant and immaterial, leading, not the best evidence; no foundation laid and not within the issues, and calling for a conclusion of the witness.

Objection overruled.

Each of the defendants excepts.

1147 A. It showed that it was not impaired.

Mr. ROSE: Each of the defendants move to strike out the answer as incompetent, irrelevant and immaterial; a mere conclusion; the statement of the capital being \$300,000 is the only fact set forth.

Motion overruled.

Each of the defendants excepts.

Q. Did these reports indicate that the bank had a surplus?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; calling for a conclusion of the witness, and not for any fact; not the best evidence; no foundation laid and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. Yes sir, every statement showed a surplus, and a certain amount of undivided profits.

Q. I hand you Exhibit No. X-977, and will ask you to state if during the time you did business with the Capital Bank you saw a notice, of which this is a copy in that form or in a condensed form?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. I saw it in that form and also in a condensed form; the condensed form I refer to was a card statement.

Mr. ROSE: Each of the defendants move to strike out the answer as not responsive to the interrogatory, incompetent, irrelevant and immaterial.

Motion overruled.

Each of the defendants excepts.

Q. I call your attention to Exhibit No. X-978, and will ask you if shortly after that purports to have been published you saw a statement similar to this in the form in which it is published, or in a condensed form on a card?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; a mere repetition and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. I did.

Q. I call your attention to Exhibit No. X-979, and will ask you if you saw a notice, or this notice in this form in the newspapers about the time it was published?

Mr. ROSE: Each of the defendants objects as a mere repetition; incompetent, irrelevant and immaterial and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. I did.

Q. Did you see it in any other form?

Mr. ROSE: Each of the defendants objects to that as incompetent, because the question itself is contradictory; it necessarily couldn't be this exhibit and be in any other form, or it couldn't be this exhibit.

Objection overruled.

Each of the defendants excepts.

1149 A. I did.

Q. Did you see the statement of the bank for the same day that this purports to be, and giving the assets and liabilities as they are here, but in a different or condensed form?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. I did; the condensed form which I refer to is the business card or statement.

Q. How did it compare, as to showing the assets and liabilities, with the published form?

Mr. ROSE: Each of the defendants objects as no foundation laid; calling for a mere conclusion of the witness without furnishing any basis to us for comparing it and verifying it, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. As to the total amount of resources and liabilities they agreed, but as I have said heretofore, in the card form it was more condensed; all the cash items were entered under the head of cash,—that would include the amount they had on deposit with their several correspondents subject to check or draft,—they treated that as cash.

Q. I call your attention to Exhibit No. X-980 and will ask you if at about the time that was published in the newspapers you saw that statement or a copy of it?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial under the issues, and not the best evidence.

Objection overruled.

1150 Each of the defendants excepts.

A. I did.

Q. And did you see it in any different form,—that is a statement purporting to give the condition of the Capital National Bank at the same date?

Mr. ROSE: Each of the defendants object as incompetent, irrelevant and immaterial; not the best evidence and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. I saw it both in the printed slip form and in the business card form, as well as the newspaper.

Q. I call your attention to Exhibits Nos. X-892, X-893, X-894, X-985, X-986, X-987 and X-988 and will ask you to state if you saw those statements of the condition of the bank in the same form

in which they appear in these exhibits, and in the newspapers at about the time these reports of the bank's condition were being published?

Mr. ROSE: Each of the defendants objects as leading, suggestive, incompetent, irrelevant and immaterial, and not within the issues. Objection overruled.

Each of the defendants excepts.

A. I did, and will further say that I saw every published report that they made during the time that we were doing business with the bank, and also received the printed slips and the card statements.

Mr. ROSE: Each of the defendants move- to strike out the answer of the witness, except insofar as it is an answer to the interrogatory.

1151 Motion sustained.
Plaintiffs except.

Q. I will ask you if during the time your bank was doing business with the Capital National Bank you didn't see all of these statements of its condition,—that is five a year?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. I did see them.

Q. Now with reference to these exhibits, X-977 to X-988 except Exhibit No. X-981 which is a card, I will ask you if you received or if you saw the statements of the bank for those same dates but in different forms?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not the best evidence; not within the issues, and assuming a fact not proven.

Objection overruled.

Each of the defendants excepts.

A. I did, I saw them in two forms.

Q. What were they?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not the best evidence; no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. In the newspapers and what I term the printed slip, which is an identical copy using the same form, as it appeared in the published newspapers and of the statement on what I term the business card.

1152 Q. And how did the amount as shown on this business card, or the card that you received compare with the amounts

as shown by this slip as you call it and with the reports as they appeared in the paper?

Mr. ROSE: Each of the defendants objects as calling for a conclusion of the witness; giving a comparison without giving the figures; not the best evidence and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. The total amount of resources and liabilities always agreed; had there been a disagreement it would have shown that there was something wrong.

Mr. ROSE: Each of the defendants move- to strike out the last portion of the answer as to what a disagreement would have shown as merely argumentative and voluntary and not responsive to the interrogatory.

Motion sustained.

Plaintiffs except.

Q. Did the newspapers published at Lincoln, the Lincoln Journal and the Call during the time the Capital National Bank was in existence and doing business contain any cards or advertisements of the Capital National Bank?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. They did.

Q. Did you see them in the newspapers as they came to you?

1153 Mr. ROSE: Each of the defendants object- as incompetent, irrelevant and immaterial, and not within the issues.

Objection overruled.

Each of the defendants excepts.

A. I saw many of the published advertisements in both the State Journal and the Lincoln Call.

Q. You read them in those papers?

Mr. ROSE: Each of the defendants object- as incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. I did.

Q. And were those papers of general circulation here in Seward and the state of Nebraska?

Mr. ROSE: Each of the defendants objects as immaterial.

Objection overruled.

Each of the defendants excepts.

A. They were.

Q. Have you the papers now in which you saw those notices as they came out?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant, immaterial, and not the best evidence.

Objection overruled.

Each of the defendants excepts.

A. No sir, I did not preserve a file of the papers.

Q. And do you remember what those cards contained?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial whether he does or not.

Objection sustained.

Plaintiffs except.

1154 Mr. THOMAS: We offer to prove by this witness that he saw and read the cards and advertisements of the Capital National Bank, which showed its resources and liabilities and was contained in the daily papers, from the time the Jones National Bank commenced doing business with this bank in 1886, and continued until its close in January, 1893, those being other than required by the Comptroller of the Currency; that those notices and advertisements contained the name of the bank, and its authorized capital and surplus, and financial condition generally, and also the name of each of its directors; that those papers are not in his possession; that they were not preserved, and that he is unable to find them and have not been in his possession for upwards of eighteen years, and are not in existence now.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not within the issues; not the best evidence, and no foundation laid.

Objection sustained.

Plaintiffs except.

Q. Now the cards and slips that you referred to, came to you I believe you said through the mails?

A. Yes, sir.

Q. In an envelope directed to the Jones National Bank, and from the Capital National Bank?

Mr. ROSE: Each of the defendants objects as incompetent and immaterial and the witness not qualified to answer.

1155 Objection overruled.

Each of the defendants excepts.

A. They did.

Q. Now, Mr. Jones, did you have any knowledge of the financial condition of the Capital National Bank,—its solvency or otherwise, other than what you obtained by reading these statements of its condition that you received?

A. Not in detail. The other would simply be from talks that I had at various times with the officers of the bank, and that of course would be in a general way.

Q. Well did you have any talks with any of the officers or directors of the bank with reference to its condition?

A. I did.

Q. About when?

A. The nearest I can place the dates would be about the latter part of September, or the forepart of October, 1890.

Q. Where did the conversations take place?

A. In the president's room of the Capital National Bank of Lincoln.

Q. What were the occasions of your going down there at that time?

A. I received a letter from the Capital National Bank,—what I would term kind of a prospectus letter in regard to the Capital National Bank and the city of Lincoln stating—

1156 Q. What did it relate to? You needn't give the contents.

A. The letter was an invitation to me to call at the bank at a certain date relative to purchasing some stock in the Capital National Bank.

Q. Was that the occasion of your visit to Lincoln at this particular time, about September 1890?

A. It was, and my only business at that time.

Q. And did you go to the bank building,—its office and headquarters?

A. Yes, sir.

Q. And who was there while you were in the bank?

A. What officers, you mean?

Q. Yes sir, or persons.

A. The officers were C. W. Mosher and R. C. Outcalt, D. E. Thompson and A. P. S. Stuart at the first meeting.

Q. Did you have any conversation there with these parties, or in the presence of them?

A. I did.

Q. At that time?

A. I did.

Q. What was that conversation?

1157 A. The talk principally was in regard that they were going to increase the capital stock of the Capital National Bank to take effect January 1st, 1891, from \$300,000 to one million dollars, and that they asked me to buy \$20,000 worth if this stock; it was in that conversation that the statement was made relative to the bank.

Q. What were the statements?

A. Those statements of course in the natural course of our conversation came up in various ways; what I mean by that is, the plea for increasing the capital stock as they explained to me was this, that the business was increasing so rapidly, and their customers with which they were doing business were increasing so that to do the business that they thought they ought to do it was necessary that they increase the capital stock; and they referred to another reason for it; some of their customers, such as jobbers and grain men at certain seasons of the year, they stated, needed more money than the law would allow them to loan under their present capital, and they considered them good loans, and that was another reason

for them increasing the capital stock, so that they could accommodate their customers and make larger loans.

Q. Well was there anything said about the condition of the Capital National Bank?

1158 A. Yes sir, there was one remark they used there several times, and that was that the Capital National Bank was the best bank in the state of Nebraska, and they was going to make it the first million dollar bank in the state, and they had a lot of their statements there,—I think probably every statement the bank had ever made, for the purpose of showing how the business of the bank had increased, and the amount of dividends that they had paid and showed that they had never paid less than a 12% dividend, and they explained to me that it was going to be no trouble for them to sell this stock, and they had arranged that the present stockholders was going to be limited in regard to the purchasing of the new stock to the amount of stock which they held in the corporation, the balance they were going to sell to other people, and they preferred to scatter that stock out to their customers, the country banks who kept accounts with the Capital National Bank. They further explained that they thought it would make a stronger bank and they were going to increase the number of directors, and it would be so arranged that a certain number of these directors should always be elected from the holders of stock who lived outside of the city, and furthermore that R. E. Moore was to be Vice president of the bank.

Q. Was that all the conversation you remember on that first trip?

A. Well that is about the essence of it; I am not attempting to give the conversation word for word; you can see that that would be impossible.

1159 Q. When was the second trip you made there on a similar errand?

A. About ten days later.

Q. Who did you meet at the bank that day?

A. I met Outcalt, and Mosher, Walsh and Yates.

Q. And did you have any conversation at that time?

A. I did.

Q. With whom?

A. With those four parties.

Q. Can you give us the substance of that conversation?

A. Yes sir, I can.

Q. You may state.

A. The substance of the conversation was simply this, that I had decided not to purchase any stock, and on their part they were talking trying to induce me to change my mind and make the purchase.

Q. Now Mr. Jones, with reference to these various statements that you saw concerning the condition of the Capital National Bank, you may state whether or not you believed them to be true.

1160 A. I certainly believed them to be true or I would have withdrawn every dollar I had in the bank out.

Q. What reliance, if any, did you place upon those statements in depositing the money of the bank there and doing business with them, and allowing it to remain there from day to day?

A. I placed full reliance and credit in the statements; it is the only method that a bank has of knowing the condition of the bank with which it is doing business.

Q. If you had known of any of the discrepancies between the report and the actual condition of the bank, or of any of the fictitious entries to which you have testified as an expert, or any of the irregularities, what would you have done as an officer of the Jones National Bank?

A. I would have withdrawn every dollar of the money.

Mr. THOMAS: That is all.

* * * * *

1161 Q. At that examination were you asked this question, referring to your means of information of the condition of the Capital National Bank:—"Had you any other means of information than the statements?" and to that question did you answer "No, sir, no other means of information as to the standing of the bank whatever, any more than the names signed to the statements lend to a statement."?

A. I did, and I answer the question the same way now.

Q. You didn't when you testified before recall any conversation had with any of the directors at any time during the existence of the bank, did you?

A. I did.

Q. In your testimony?

A. I wasn't asked that.

Q. You didn't testify to any fact of that sort, did you?

A. I wasn't asked.

Q. Well did you so testify?

A. No sir.

Q. You had prepared your case as you have this one.

A. I stated I haven't prepared either one of the cases for trial.

Q. You made no claim in your testimony at the other trial that you had any previous personal acquaintance with Mr. Thompson, did you, in your testimony before?

A. I have no recollection of that question being asked me; the testimony will show for itself.

Q. I have asked you to tell me.

A. I have no recollection.

Q. You think you may have and you may not have done so?

A. I know I have been acquainted with Mr. Thompson for years in a business way.

Q. Now Mr. Jones, let me ask you this question. If it is not a fact that the first time you were ever introduced to Mr. Thompson to speak to him in your life was sometime subsequent to the former trial of these cases in 1902, when you were introduced to him by Mr. Edward Bignell at Lincoln?

A. No sir.

Q. Will you affirm now that Mr. Thompson, ever, in the course of your life spoke to you or gave you any indication of recognition until subsequent to the trial of these cases in 1902?

A. I will say that that is not the fact.

Q. Well what intercourse had you with him before that time, outside of what you have detailed?

A. The first one, I remember very distinctly was over some cattle. I had cashed a sight draft drawn on a gentleman that lived in Iowa and I sent the draft direct to the bank and instructed them if it wasn't collected to wire at my expense. The cattle were on the road and Mr. Norval and I went to Lincoln and went to Mr. Thompson and stated the facts to him and asked him to set the cattle out, and he refused to do it at first; we then applied to Mr. Marquette and the cattle were set out of the train.

Q. When was that?

A. That was several years prior to the failure of the bank.

Q. Did you personally speak to Mr. Thompson about it?

A. Mr. Norval was the attorney and he went with me for that purpose.

Q. He was the man who did the talking?

A. Yes, sir.

Q. Do you remember what year that was?

A. I don't remember exactly; it was in the latter part of the 80's, but I remember that very distinctly because I was interested to the extent of quite an amount of money.

Q. Did you ever have any other transaction with him?

A. No sir, that's the nearest it ever came to a business transaction.

1163 Q. Did you say anything to him about the Capital National Bank when you went to see him about the cattle?

A. No sir, we were on an entirely different errand at that time; we didn't have time.

Q. I just asked you if you had.

A. No sir.

Q. Do you recall any other time that you ever ran across him in anyway so that he spoke to you or gave you any recognition, or showed any indication that he was acquainted with you?

A. Yes, sir. I have met him on the street many a time and we generally always bowed or made some sign of recognition as we passed.

Q. On the streets of what city?

A. Lincoln.

Q. Did he ever stop and talk to you?

A. We never had any extended—the most extended conversation we ever had was that time I stated a while ago, when they wanted me to buy \$20,000 worth of stock.

Q. Did he ever speak your name when you passed?

A. Yes sir.

Q. What would he call you, Harry Jones—or what?

A. Well I don't know about that.

Q. Did he ever stop and talk to you?

A. We have passed the time of day numbers of times, just like I have with you, on the street, and I couldn't tell what was said.

Q. Now did you do any more than pass the time of day, except at this one interview in September, '90?

A. Well there was considerable said when we had those two car load- of stock set out.

Q. Well but Mr. Norval did the talking for you then?

1164 A. The principal part of the talking, yes, sir.

Q. Well now outside of that was there anything, ever any intercourse between you other than passing the time of day?

A. Not as I remember of anything in particular other than what I have stated.

Q. Now what time in September were you in the bank?

A. The latter part of September.

Q. About how far in September?

A. I should say from the 20th on down.

Q. Where is the letter that asked you to come in on that deal?

A. I don't know.

Q. Did you ever get such a letter?

A. Yes, sir, and I seen you with one of them one time to,— you had a letter of that kind in the Gurner case.

Q. I am talking about a letter asking you to come in on the deal?

A. That is the same kind of a letter; I went down with Mr. Jurgensen of Staplehurst on the same train for the same purpose and he had one. Do you remember that letter you showed to me?

Q. Oh, no, I don't have any recollection of that, and it wouldn't be material if I did, because I didn't deposit your money in the bank. Now you stick to the text. You said you had a letter requesting you to come into the bank on a certain day. Now did you ever have such a letter?

A. I did.

Q. Was it a printed circular?

A. It was printed and typewritten combined.

Q. You never preserved it?

A. I did.

Q. Where is it then?

A. I don't know what became of the letter when the case was tried before; I didn't think it was material.

1165 Q. Who talked to you about making the Capital National Bank the biggest bank in the state, or the first million dollar bank in the state; what particular person said that?

A. It was talked between us.

Q. No, now, which person said that,—do you remember?

A. I don't.

Q. You couldn't identify the person that made the statement?

A. I know that those words were used several times,—the Capital National Bank is the best bank in the state, and we are going to make it the first million dollar bank in the state.

Q. But you have no recollection at all as to who said that?

A. I think more than one said that—I wouldn't be surprised but what that remark was used by all of them; I know we all talked

about the condition of the bank, and they had the statements there to show the increase in the business of the bank.

Q. You have stated all that once, but I was asking you who made the principal solicitation,—who was it solicited you to buy the stock?

A. I think Mr. Mosher done more talking than any one person; they all participated.

Q. What time of day was it you went in there, do you remember that?

A. I do.

Q. What time was it?

A. It was before the noon hour; I remember our train got in somewhere between 10 and 11 o'clock, and Mr. Jurgensen and I went direct to the bank.

Q. How long were you in there?

A. Up until the time that we went to dinner.

Q. Now you said you went back again on the same errand, did you?

A. Yes, sir.

1166 Q. You went clear back to Lincoln to tell them you were not going to subscribe?

A. No, I waited until I was going down on some other business, and then took that occasion to attend to both of them.

Q. Is that the way you did the first time,—did you have a specific appointment by letter for a specific time to meet anybody at the Capital National Bank?

A. I had a letter from the Capital National Bank requesting me if convenient to call at a certain day and I did.

Q. You didn't keep that letter in your files?

A. It was kept until these cases were started.

Q. Why was it not kept then?

A. Well, sir, I can't explain how some of those things kind of got scattered around and worn out and lost. I told you at the Gurnee trial, and you promised you would try and get me one,—you didn't want to let me have the one you had.

Q. Did you ever have them with Receiver McDonald at any place?

A. Not as I remember of, unless they got among the batch of note-.

Q. Do you suppose they went along with some of those missing statements?

A. Oh, no, I am quite sure of that, because we didn't leave any of our stuff down there, unless it was done by accident.

Q. I didn't know but what you might have brought some of that stuff home with you and lost it too.

A. Well it might have but I don't think such is the fact.

Q. I wish you would tell me what Mr. Thompson said to you in any conversation there at the Capital National Bank, and repeat his words, as near as you can tell.

1167 A. I have tried to state the substance of that conversation.

Q. I ask you what Mr. Thompson said, and asked you if you could identify any of the conversation.

A. I stated the substance of our talk at that meeting as near as I could remember.

Q. I understand that, but can you recall what Mr. Thompson did say to you?

A. No, not particular, only he took part in this conversation.

Q. That is as much as you can give of what he said is it?

A. I wouldn't attempt to single out the talk of just what anyone said, but they seemed to be all acting together, and their object was to try to interest me to buy some of that stock in their million dollar bank as they termed it.

Q. You didn't subscribe?

A. I did not.

Q. That probably was the reason they dropped the undertaking. Now you don't ascribe any of these statements personally and definitely to Mr. Thompson, do you?

A. I do. I think this way, if I am talking with four men about a certain subject and they're all interested, and they all take their part in the conversation and nothing is said to the contrary, I naturally have to treat it the same as if each person had made the same statement to me.

Q. And that is the only way you could definitely connect Mr. Thompson with any statement now?

A. Oh, no, Mr. Thompson done his share of the talking.

Q. What part of the conversation did he take up?

A. The entire conversation was to show the great progress that the Capital National Bank had made; how good a bank it was and how good a dividend payer it had been, and it was thought best in their judgment, in order to continue their business and 1168 take care of their customers to increase the capital stock, and they was going to sell, as I said before, a certain amount of this stock out through the country banks, and the country banks were to be represented on that board.

Q. Did Mr. Thompson say that he had any purpose to do that?

A. He seemed to be interested just the same as the others were; they were all acting together; all officers of the bank.

Q. Who else was present on that occasion?

A. There was Mosher, Outcalt, Thompson and Stuart.

Q. You recall that very definitely do you?

A. Yes, sir, because it was along a line of business that I was interested in, and was doing business with them, and I was pleased to know that they were getting along as they stated, even though I didn't purchase stock in it.

Q. Now you didn't have a very long interview the second time did you?

A. No, sir.

Q. You just went in and told them you had concluded you wouldn't subscribe, and they said they would like to see you take some of their stock, did they?

A. After I finished my business I sat down and I told them I

had decided not to make the purchase, and they proceeded in their way to get me to change my mind and to make the purchase.

Q. Who proceeded in their way?

A. The parties that I named.

Q. All of them,—who were there the second time?

A. Mosher, and Outcalt and Yates and Walsh.

Q. You knew Yates well at that time, did you?

A. Not as well as I did the others.

Q. Did you know him at all?

A. Yes, sir.

Q. Yates was a booster for the big bank, too, was he?

1169 A. They seemed to be all along that line; there wasn't any of them throwing cold water; they were all trying to sell the stock.

Q. I suppose during these years from 1889 to 1893 you read the State Journal every day; you seen it every day?

A. No, I would hate to say that.

Q. Were you a regular subscriber during all that period of years to both papers?

A. I was not.

Q. Were you a regular subscriber during any portion of that term to either paper?

A. I was at all times to one or both.

Q. Well for what period of that time were you a subscriber to both the Call and the Journal?

A. I have taken the Journal as far back almost as I can remember, and I took the Call after it started for some little time; that was our evening paper out here.

Q. How long did you take the Call?

A. I wouldn't attempt to say.

Q. Did you just buy it casually when you would buy it at the news stand?

A. No, sir.

Q. Or were you on the mailing list?

A. Here we always get them through our local man; our news stand here.

Q. You depended on the news stand to get your Call, did you?

A. I have on all my daily papers; I take it from the news-stand here; that has been my habit.

Q. You were anxious always to see the condition of the Capital National Bank?

A. No more so than any other of our correspondents.

Q. You kept tab on all of them.

A. Yes, sir.

1170 Q. Now you went into the credits that had been allowed and paid to you. Did you give all the sums that you have been paid, or collected on account of this claim?

A. I was only asked in regard to the amount I have received from the Receiver of the Capital National Bank.

Q. Did that include all that you had received?

A. No sir, it did not.

Q. What other sums did you receive?

A. As to the exact amount I couldn't say. The other was money derived from a judgment which was obtained on Mr. A. P. S. Stuart and some of his property sold through the court. The court records will disclose that, but there has been no money received for many years, in fact for sometime prior to the time this case was tried before, May or June, 1902.

Q. Didn't you after the trial in May or June, 1902, receive from Edwin T. Peters on account, who was interested in the estate of the widow of A. P. S. Stuart a large sum of money?

A. In reply to that I will say that there was some money received; I won't say from this person you speak of, but probably from the same source; it was a small amount of money, and just as to the date I am not certain; I think the records will disclose the date of the payment.

Q. Was there as much as \$20,000 paid at one time in the office of Mr. McMurtry of Lincoln?

A. No sir, there has not been that much paid of the entire bunch on these claims.

Q. Of what was paid to McMurtry what share did you get?

A. I don't know.

Q. What share did the whole bunch of you get?

A. I don't know exactly what you are referring to; I never received a dollar from McMurtry as far as I know.

1171 Q. At one time there was paid to you in McMurtry's office by this Mr. Peters the sum of \$20,000 wasn't there?

A. Paid to me?

Q. Yes sir.

A. No sir.

Q. What sum was paid?

A. I have no recollection of any being paid.

Q. What sum was paid to you on account of the Stuart estate?

A. I couldn't say; I believe the records of this court will show the amount of all moneys received.

Q. After the trial of this case in 1902, Martha Stuart died, didn't she?

A. I don't remember.

Q. And you presented a claim against her estate,—that is these different plaintiffs,—not you personally.

A. I have no recollection of that; that might have been done by counsel for those parties, but I have not recollection or definite knowledge of it.

Q. You acted in a measure through attorney L. C. Burr in some respects in regard to that?

A. No sir.

Q. And conferred with McMurtry?

A. McMurtry has tried a number of times to do something which I couldn't tell what he was trying to do, and it went so far that I told him I didn't care to discuss the matter with him.

Q. You gave McMurtry a Quit Claim deed to some property to use in your behalf didn't you?

A. I would say no. Now then what I meant by that Mr. Rose is I never had any business dealings with Mr. McMurtry. I remember distinctly of Mr. McMurtry coming and stating that he 1172 knew of some property which could be got at and his proposition was that he wanted to make,—he wanted us parties interested in this suit to lend our name to him, and he would collect some money and give us half.

Q. Well now you loaned your name, didn't you?

A. No sir. The only thing that is in my mind at all is in regard to the homestead of Martha E. Stuart. It seems that they wanted—well I don't know, they wanted to do something and offered a small amount of money, it seems to me, if that judgment against the homestead could be released, or something of that kind, but I had nothing whatever to do with it, because he was a gentleman that I didn't care to deal with, and I refused to have any transaction with him and told him he must do it through the attorneys.

Q. You remember the administrator of Martha E. Stuart—

A. What was his name?

Q. Peters, Edwin T.

A. Yes, sir.

Q. Don't you remember of placing a quit claim deed in Mr. McMurtry's hands?

A. To what property?

Q. To all property which had been previously purchased?

A. My memory in regard to what Mr. McMurtry wanted to do is not clear for the reason he was a man I had no faith in; I put him down as a crook and refused to have any dealings with him, and told him he must talk to the attorneys.

Q. Don't you remember the delivery of a deed?

A. I never delivered a deed to Mr. McMurtry; if there was a deed of that kind given it must have passed through the hands of the attorneys.

Q. Which attorneys?

A. Mr. Thomas, or Norval Brothers, or Mr. Burr.

1173 Q. Which one?

A. I couldn't say.

Q. Did you keep any record of the amount of money you got?

A. Every dollar that I know of that I ever received is on record in this court. That part of the business has been left to the attorneys. The money we received on execution I never had anything to do with; it was done through the attorneys.

Q. Well did you share in one collection that was made by McMurtry of upwards of \$20,000?

A. I never did; I never received a dollar from McMurtry.

Q. Did you share in the collection made, supposedly on behalf of these plaintiffs in the proceeds of a further collection made in order to get the claim of these plaintiffs withdrawn from the estate of Martha Stuart in Lancaster county, the payment made for that purpose being \$2,000?

A. The only money I have ever received from any source on account of this Capital National Bank case has been through our attorneys.

Q. You couldn't answer that any further?

A. I have no recollection of anything of that kind, Mr. Rose.

Q. But you do recall that some money was derived from that source, but you don't remember the amount?

A. I know there was something in regard to the homestead of Mrs. Stuart, but just what was done with that I have no definite recollection, because I didn't do it; whatever was done was done by counsel.

Q. Were not you personally present in the office of James H. McMurtry in the front basement of the Burr block when Edward T. Peters paid over there for the use of the plaintiffs the sum of \$2,000?

1174 A. I haven't any recollection of anything of that kind.
Q. Being the second payment he had made on account of this?

A. Please state to whom the money was paid.

Q. Well it was paid in your presence to you or McMurtry.

A. McMurtry wasn't with us; he was with the Lincoln gang.

Q. I was taking your former statement that he wanted you to lend him your names.

A. But I said I refused to have any business dealings with Mr. McMurtry, and I told him so.

Q. But contrary to that statement is it not true that you were personally present in McMurtry's office in Lincoln when \$2,000 was paid over on account of this?

A. No sir; there is nothing to that.

Q. And you never saw Edward T. Peters pay a cent on this?

A. No sir.

Q. To you or McMurtry or anybody else?

A. I don't know what he may have done with anybody else.

Q. I say you never saw it?

A. No sir.

Q. And you never shared in the \$2,000 payment or the \$20,000 payment?

A. I received every dollar that the attorneys in this case have brought to me.

Q. What attorneys have brought anything to you?

A. I haven't said anybody has.

Q. Do you say that nobody has?

A. I will say that I am willing to stand by—

Q. I want to know what you personally know about it.

A. I have received no money on account of this case from anybody, only through the attorneys in the case.

Q. What you received from the attorneys don't you know you got?

A. No sir.

1175 Q. Aren't you trustee for all these funds and the custodian and don't you hold the real estate that you have gobbled in from the Stuart estate,—from the Stuart executions?

A. Of how much?

Q. Of whatever it is, don't you hold the land in trust?

A. Yes sir; it is forty acres of land.

Q. Then you have conveyed large tracts of land of great value, haven't you, and didn't you get the money for the conveyances.

A. Now what you would call a large amount of money maybe I wouldn't, or what you may call a large body of land I wouldn't.

(Adjournment taken until Feb. 10, 1911, at 9 o'clock a. m.)

February 10, 1911—9 a. m.

Cross-examination of Mr. JONES continued by Mr. ROSE:

Q. Mr. Jones, of course as a banker and accustomed to scrutinize the official bank reports to ascertain the bank's pecuniary responsibility, you wouldn't trust a bank on a statement of a year ago, or wouldn't have at this time trusted a bank on a statement of a year ago, if a subsequent report showed that its condition had changed?

A. In my experience in banking and business—

Q. Just answer that question direct.

A. I can't answer that question in that way.

Q. All right if you can't answer it. You say you scrutinized each new report at the time it came out?

A. Always.

Q. And if I understand you correctly the import of your testimony was that if whenever you saw any one of these reports in which you found any indication that the bank's condition
1176 was questionable, you would immediately have withdrawn your entire deposits while you had an opportunity?

A. I certainly would.

Q. So that the last statement that came out each time would be the inducement each time for you to leave your deposit there?

A. To a certain extent, yes sir.

Q. And even though you saw indications in the last reports that the pecuniary condition of the bank was questionable, would you have left your money then on the faith of a previous report that showed up good?

A. I think not.

Mr. ROSE: I think that is all. Mr. Bishop may want to cross examine you on some matter; he appears for other clients.

Mr. BISHOP: I think I have no cross examination.

Redirect examination.

By Mr. THOMAS:

Q. Mr. Jones, are reports of banks that are doing a constant business, changed from time to time?

A. Yes sir, the statement does, some.

Q. There is nothing unusual in showing a different statement from one report to another in the regular course of business.

A. It would be impossible for a bank to make the same statement on two consecutive days.

Q. That is if it did any business.

A. That's understood.

Q. Now referring to this conversation you had at the Capital National bank in 1890, with reference to this million dollar proposed bank, you spoke of Mr. Jurgensen. Was he present at the time of this conversation in the bank?

A. He was; we went in on the train together.

Q. Who was Mr. Jurgensen?

1177 A. President of the Bank of Staplehurst.

Q. Was he president of the Bank of Staplehurst at that time?

A. That is my present recollection.

Q. And is he still living?

A. He is not.

Witness excused.

Mr. ROSE: I will want to recall Mr. Walter T. Scott for further cross examination. I served a subpoena on him last night.

Mr. THOMAS: He will be here; he is still in town.

* * * * *

1178 Mr. FRITZ BECKORD, called as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. THOMAS:

Q. State your name to the reporter.

A. Fritz Beckord.

Q. Where do you live?

A. Utica, Nebraska, Seward county.

Q. How long have you lived there?

A. Been there since the town started, in '75 or '76, somewhere's around there.—or '77, somewhere's around there; I came there at the time the first house was built.

Q. And while you have lived there have you been in any way connected with the Utica Bank, one of the plaintiffs in this suit?

A. Yes.

Q. And from what time?

A. From 1887, I believe.—January 1st,—or somewhere's around the first part of January, 1887.

Q. Was that at the time the bank was organized, or had it been going previously?

A. A fellow by the name of Walter Brant, and Ed ——— organized it then, and I went into the bank then,—called it the Utica Bank.

Q. At that time did you become President?

A. Yes, sir.

Q. And continued president ever since?

A. Continued ever since.

Q. After you became president of the Utica Bank, did it have any deposits in the Capital National Bank?

A. Yes. It had deposits in the Capital National Bank at the time I took president of it and went in and invoiced everything 1179 and checked the books over and I took it then.

Q. Did you make any inquiry or investigation as to your depositories, that is where you kept your money, what banks you dealt with in Lincoln?

A. Yes, sir.

Q. What investigation or inquiry did you make?

A. Well I asked our Cashier—I says “How is this bank standing”? Well he showed me statements of the condition of the bank and then I inquired from time to time into it to see the way it showed; from the statements it showed they was still improving business and all that, and so we continued doing business with it until it failed.

Q. That is you continued to keep money in the Capital National Bank from that time on until it failed.

A. Yes, sir.

Q. Now did you see any notice of the condition of the Capital National Bank that were advertised in the newspapers from time to time?

A. Yes sir, I did.

Q. What ones did you see?

A. I seen in the State Journal and Evening Call; then there is a German paper printed down there; I kept that, a weekly called the Lincoln Frie Presse.

Q. Is that a paper printed in the German language?

A. Yes sir; I keep that and read it, and I compared with them papers,—the statements comes out about five times a year and when I compared them one compared just the same as another.

Q. Are you German?

1180 A. Yes sir.

Q. Born in Germany?

A. Yes sir.

Q. And during the time that your bank did business with the Capital National Bank did you see all their published statements that came out?

A. Yes sir, I guess I seen them all, and I was there in the bank more or less all the time, and at the time the mail came in, and the cards was piled up; a good many times they sent out in the paper, and then they sent a special card of the condition of the bank, and so this bank was doing all right—improving always, so we kept on doing business with it.

Q. What cards do you refer to?

A. Oh they're kind of business card, and it says on there—

Q. Did you save any of those cards, or have you any of them now?

A. I haven't any of them now; they kept them for years and then they was filed away and then they was destroyed.

Q. Have you looked for them?

A. Yes sir, I looked for them.

Q. And tried to find them?

A. Tried to find them.

Q. And have been unable to find them?

A. Couldn't find any.

1181 Q. Now you may tell us what those cards contained,—explain what was on them.

A. Well there was on one side there was resources and on the other liabilities, and below them the directors under there and sometimes the president.

Q. What names would appear there, Mr. Beckord?

A. Well there was Yates and Thompson and Hamer and Phillips and—well I don't know I couldn't think of any more names.

Q. Was Mr. Stuart's name on them?

A. Stuart's name was on them to-, that's right.

Q. Did Mosher's and Outcalt's name appear on the statement?

A. They appeared on them, yes; Mosher and Outcalt appeared on it.

Q. What did those statements show—what did they state generally?

A. Well they show the liabilities; it first showed the capital stock on one side,—

Q. How much?

A. \$300,000, and then the surplus and then the amount of
1182 deposits, and on the other side it showed the loans, and what money they had on hand,—it was kind of statement, this card did; it was in condensed form, only they ain't so big as published in the newspaper.

Q. Explain to the court the difference, if any, between what was on this card and the way it was in the newspaper?

A. I can explain it here,—here is one of the cards we just got a couple of days ago,—

A. —that was about in the same condition,—here it says Loans,—

A. —Well it is just the same like this,—there is the loans and there is the United States bonds,—there is bonds, and there is banking house, and there is the liabilities, and there is the capital and surplus, circulation and deposits on both of them cards just like this one.

Q. But the figures were not the same?

A. No, I mean them cards was just the same. The amount of figures on them was just the same like the statement showed:
1183 we compared the statement in the paper and then compared them cards together and they are just always the same.

Q. You say the bank kept them for a year or so?

A. Yes, sir.

Q. And was that the custom of your bank all the time you have been connected with it?

A. Yes, sir.

Q. And did that with all of your other banks?

A. Yes sir, we did that with all the banks.

Q. And were you acquainted with the directors of the Capital National Bank, any of them?

A. I know them by sight and seen some of them; I wouldn't know all of them.

Q. Did you know them by reputation?

A. Yes, sir.

Q. What was the reputation of the directors as men of financial standing?

A. They said and claimed to be and the way they represented they was all good honest business men and financially doing well.

Q. Now Mr. Beckord, what reliance if any did you place on those statements that you received?

A. All the reliance I put on it; they showed,—just simply everything showed right and they was perfectly responsible, and that was the reason we kept our money there; kept them for 1184 our correspondent.

Q. Did you have any knowledge as to the insolvency of the bank, or that it was not in a good financial condition at any time?

A. No I did not, if I did I wouldn't have left any money there.

Q. Now Mr. Beckord, do you remember of ever having heard anything concerning a projected plan to make a million dollar bank of the Capital National Bank?

A. Yes, sir.

Q. About when was that?

A. Well I couldn't tell the year; I come into the bank one morning and Mr. Brant was opening the mail and he showed me kind of a letter, and I looked it over and I says "Well them fellows is doing pretty well."

Q. Have you got that letter?

A. I read the letter over and it simply invited us to take some stock in that bank there, to increase the capital and I told Mr. Brant,—

Q. Just state what the letter said.

1185 Q. Have you been able to find that letter?

A. No.

Q. Have you looked for it?

A. I have looked for it.

Q. And have you made diligent search for it and couldn't find it?

A. Yes sir.

Q. Tell us your recollection then of the contents of the letter?

A. Well it went on that they—as near as I can tell—that they were going to increase their capital to a million dollars; they was going to make out of it a million dollar bank in order to make it the biggest bank in the state, then they invited us correspondent

banks,—they wanted us to take some stock in order to increase that capital.

Q. Was there anything in the letter with reference to your coming to Lincoln?

A. I couldn't say whether there was or not; it might;—it has been so long. All I know I told Brant,——

1186 Mr. BISHOP: We object to what he told Brant.

A. —so I didn't pay no more attention to it; I thought I had my hands full at home, so I didn't pay no more attention to it.

Q. Did you go to Lincoln to see them about it?

A. Perhaps it was a month or so afterward I went down and talked to Mosher and Outcalt about it.

A. Well I told them the way I was fixed and all that and I didn't believe I would take any stock in the concern, or in the bank.

Q. You may state, Mr. Beckord, how much money the Utica Bank had on deposit with the Capital National Bank at the time of the latter's failure.

A. We had the time it failed, January 21, was \$7497.17. I believe that is the correct amount; I took it from the books and I believe that's right.

Q. Was that the amount that the Capital National Bank was owing the Utica Bank at the time the Capital National Bank failed?

1187 A. Yes sir.

Q. And what dividends, if any, have you received on that amount from the Receiver of the Capital National Bank?

A. We received once ten percent, and once five per cent and then two percent; I believe it was 17% all together.

Q. Can you give the dates of those dividends?

A. No I couldn't.

Q. Have you your Receiver's certificate with you?

A. No, I haven't; I looked for that after we moved and couldn't find it.

Q. You say the banking house has been moved?

A. Yes, the bank building,—the office has been moved.

Q. Can you tell from your books what is the date of the first dividend?

(Witness examines book.)

A. September 2, 1893, \$749.71.

Q. That is the first dividend?

A. That's the first dividend.

Q. That is the 10% dividend?

A. The 10% dividend.

Q. And what is the date of the second?

A. Well it is here the 28th, it shows \$374.85.

Q. That's the five per cent dividend?

A. Yes sir.

Q. Mr. Beckord, I forgot to ask you, did you ever get from the Capital National Bank a statement of its condition on a sort of a

printed slip, which was the same as that contained in the newspaper?

1188 A. Yes, sir.

Q. Explain what they were.

A. Well it was just in the same form like printed in the paper, only they was just printed on a piece of paper,—in the same condition that was in the paper, just exactly.

Q. Have you got any of those slips?

A. I haven't got any of them; I have been hunting for some of them; I have got something similar like it; there's something like it, (exhibiting paper).

Q. Did you get slips of that character to which you have just testified each time a report was called for and published of the condition of the bank?

A. Part of the time we got a slip and part of the time they sent some of those cards.

Mr. THOMAS: That is all.

1189 Cross-examination.

By Mr. BISHOP:

Q. Mr. Beckord, you were not a banker when you went into that concern at Utica, were you?

A. No.

Q. What business had you been in?

A. Lumber business.

Q. Never had any experience in banking?

A. No.

Q. It was a bank when you went into it?

A. Yes, sir.

Q. Had been doing business for sometime?

A. Yes sir.

Q. And had a deposit at that time with the Capital National Bank at Lincoln?

A. Yes, sir.

Q. And you continued the deposit in the same bank?

A. Yes.

Q. Did you make any investigation as to what interest the other banks in Lincoln were paying for deposits?

A. Yes sir.

Q. You did?

A. Yes.

Q. Could you do better on interest with the Capital National Bank than with the others?

A. No. The interest simply was very small what we got; simply what our correspondent banks——

Q. You say you saw the published statements in the newspapers?

A. Yes sir.

Q. They were all alike, you say they corresponded?

- A. Yes sir, they corresponded.
- 1190 Q. You watched the newspapers for those reports?
- A. Yes sir.
- Q. Did you rely on those reports?
- A. I relied on them reports and on those cards what I said.
- Q. Which contained the same information?
- A. Contained the same information.
- Q. And one of them was a newspaper printed copy of the same thing you saw in the newspaper?
- A. The same exactly; only in the German paper it was printed in the German letters.
- Q. But exactly the same information?
- A. Just exactly the same.
- Q. That was all the information you had to rely on?
- A. To rely on, yes sir.
- Q. And that is what you did rely on?
- A. Their reports and their cards.
- Q. Well I say that printed stuff.
- A. Yes sir.
- Q. And nothing else?
- A. No.
- Q. You were a witness here in this case when it was tried in 1902, weren't you?
- A. Yes, sir.
- Q. And you testified them?
- A. Yes, sir.
- Q. Were you asked "Did you have any other information except what you saw in the papers?" and you answered "No, I haven't"?
- A. In the papers and them cards I said.
- Q. That answer that you made was true?
- A. I guess that was true.
- Q. Do you know how much the Utica Bank had in the Capital National Bank at the time you took hold of it?
- 1191 A. You see I have got a book here, (Witness refers to book) No, I can't tell you, on account of I haven't got them books here.
- Q. Did your bank borrow from the Capital National Bank?
- A. I don't know if we have borrowed any money of them or not; it has been so long of course I couldn't tell.
- Q. Did your account with the Capital National Bank consist of an active account; one that was added to and diminishing constantly?
- A. Added to and taken off,—for instance we get a draft and stuff, we send that in to them, and we issued drafts against them, and they forward our money to the eastern corresponding banks.
- Q. It was an active account all the time?
- A. Just one account; we got every month a statement of them how it stood.

Mr. BISHOP: That is all.

Redirect examination.

By Mr. THOMAS:

Q. In answer to one question,—I don't know if you understood it, you said that you saw the statements in the newspapers and they were all alike.

A. I mean they were all alike, for instance, you go to work and say they issued a statement,—a report the first month,—well what I mean, I seen that their accounts, in the German paper, and then I seen it in the Journal or Call, or on the card or slip and I compared — together and they was all the same amount and the same items.

Q. Did you mean the reports for the different times,—the three or four or five during the year,—would they be all alike?

1192 A. No, they would vary; what I understood by it, they was all alike; I compared them with four different sources from where they come from,—some in the papers and some in the cards and some in the slips.

Mr. THOMAS: That is all.

Recross-examination.

By Mr. BISHOP:

Q. Mr. Beckord, during the time you say you saw those statements, in the newspaper generally I think, what paper did you take as a regular subscriber?

A. As regular subscriber I had Cerman paper, it was a weekly,—and then the Journal we keep that all the time in the bank there.

Q. Did you take the Journal as a regular subscriber there in the bank, every day?

A. That was there for several years; we had the daily in the bank there all the time.

Q. Did you have the Call?

A. We wasn't regular subscriber. I believe he subscribed once for it for six months or a year on account it come out in the evening.

Q. When was that?

A. That was somewhere around between the '80's and 90's, I couldn't tell the year.

Q. When were you a subscriber to the Freie Presse, the German paper; when did you begin?

A. It must have been in '84 or '85.

Q. How long did you take it?

A. Oh I took it up until Major Clutch died; he was the editor of the paper.

1193 Q. Well when was that?

A. Well he must be dead ten or twelve years; I couldn't tell how long; I know we had that paper for a long, long time.

Q. Don't you know that he died as long ago as twenty years?

A. No, he ain't dead twenty years.

Q. And you say that what you saw in the German paper corresponded with what you saw in the English paper?

A. In the English paper.

Mr. BISHOP: That is all.

By Mr. THOMAS:

Q. Did you take another paper that was published at Lincoln, called the Staats-Zeitung?

A. Yes.

Witness excused.

1194 Mr. E. JACOBS, called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. THOMAS:

Q. Where do you reside, Mr. Jacobs?

A. Staplehurst.

Q. How long have you lived there?

A. Since 1881.

Q. Are you a native of this country, or are you foreign born?

A. Born in Germany.

Q. How long have you been in this country?

A. Since 1872.

Q. During the time that you have lived at Staplehurst, have you been associated or connected with the Bank of Staplehurst, one of the plaintiffs in this action?

A. Yes sir.

Q. When did your association with that institution begin?

A. In February 1886; I think it is just 25 years ago today.

Q. And in what capacity have you been connected with that bank?

A. I was in there as cashier,—I don't know the exact year, I think it was 1884 I was cashier until Mr. Jurgensen died.

Q. You mean 1894?

A. '94, that's right.

Q. You mean you were cashier from 1886—

A. —from 1886 until 1894.

Q. You were cashier until 1894, and since then you have been president?

A. Yes sir.

1195 Q. And while you were cashier, who was president of the bank?

A. Lars Jurgensen.

Q. He died in 1904?

A. Yes, sir.

Q. During this period from 1886 to January 1893, was the Bank of Staplehurst a depositor with the Capital National Bank of Lincoln?

A. All the time, yes sir.

Q. And who was in active charge, or did most of the active work in the bank?

A. I did most of it.

Q. And what was the nature of your business with the Capital National Bank and the extent of it, and the character of the business you did with the Capital National Bank,—that is were they your Lincoln correspondent?

A. It was the Lincoln correspondent.

Q. And what was the character of the business you did with them?

A. Sent the drafts there and drew on them.

Q. Did you have any other correspondent at Lincoln?

A. No sir.

Q. Do you know how much money the Bank of Staplehurst had on deposit with the Capital National Bank, or which the Capital National Bank was indebted to your bank at the time of the failure of the Capital National Bank, January 21, 1893?

A. I do know, yes sir.

Q. Have you got your books here?

A. No, they're over in your office, I guess. Something over \$14,000.

1196 Q. If you know the amount you may state.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

A. \$14,264.33.

Q. What payments have you received on that from the Receiver of the Capital National Bank?

A. Seventeen per cent.

Q. And do you know the dates that you received the dividends?

A. I don't remember the dates.

Q. Now at the time that you took charge of the bank and up until the time the Capital National Bank closed in January 1893, did you see any statements of its financial condition from time to time?

A. Yes, sir.

Q. And where did you see those statements?

A. I have seen them in the Journal.

Q. The Nebraska State Journal?

A. Yes, sir.

Q. Any other place?

A. I think it was the Call.

Q. Of Lincoln, a paper published at Lincoln?

A. Yes, sir.

Q. And any other papers?

A. I kept the German paper but there was only cards in there in a condensed form.

Q. In the German paper?

A. Yes sir, just the Capital stock, and then the—

1197 Q. How many statements of its financial condition did the Capital National Bank publish each year?

A. Five.

Q. You may state whether or not you saw all of them, while you

were cashier of the Bank of Staplehurst, and doing business with the Capital National Bank.

A. I have seen them all as near as I remember.

Q. Now did you receive them in any other form?

A. I seen them in a condensed form in the shape of a business card.

Q. Where did you see those?

1198-1203 A. They were sent to the bank about as regular as the statement came out.

Q. What did you do with those cards as they were received?

A. I saved quite a number of them as they came in,—the latest ones.

Q. Have you looked for any of those cards, since this case has been set for trial?

A. Yes, sir.

Q. And have you been able to find any?

A. Not this time; it was at the former trial I handed them to you and Biggs.

Q. Have you any of them in your bank at Staplehurst?

A. No sir.

Q. And have you looked for some more cards?

A. I have but I thought it was no use because I hunted up everything at that time of the former trial and handed them to you and Biggs. You got them at that time.

Q. That was before the other trial; Mr. Biggs died I think in 1899.

Witness temporarily excused.

* * * * *

1204 E. JACOBS recalled.

Direct examination continued.

By Mr. THOMAS:

Q. Now Mr. Jacobs do you recall having heard anything of the plan or scheme that the directors of the Capital National Bank had to increase it to a million dollar bank?

A. I remember that they have been writing; I remember letters came that they wanted to increase their stock.

Q. In what way?

Q. Have you got that letter?

A. No sir.

Q. Have you been able to find it?

A. No.

Q. Have you made search for it?

A. Yes.

Q. Have you searched for it diligently,—have you tried to find the letter?

A. I tried to find it, yes.

Q. Have you looked where you keep letters of that character, and where this would likely be if in existence?

A. Yes sir, I looked where I thought it might be.

Q. And at any time since receiving that letter have any of your bank files, or records been destroyed in any way?

A. Yes sir.

1205 Q. When and how?

A. When our bank was broke into and burglarized; pretty near the whole vault was blown up at that time; I don't remember now what year that was.

Q. After the Spanish war?

A. Yes sir, it was after the Philippine war.

Q. Give us the contents of that letter.

Q. Give us the substance of it as near as you can.

A. The substance was that they meant to increase their capital stock, and sell it to their correspondents, if they could.

Q. Do you know to what amount they were going to increase it?

1206 A. I don't remember.

Q. And did any representative of your bank go down to Lincoln to see them?

A. Yes sir.

Q. Who was it?

A. Mr. Jurgenson.

Q. Who was Mr. Jurgenson?

A. President of the bank.

Q. Was he president of the bank at that time?

A. Yes sir.

Q. Now is there any instance that recalls that to your mind that causes you to remember it?

A. Yes sir.

Q. You may state the circumstances.

A. Well he came,—

Q. Who do you mean?

A. —with a big plug hat on what he had taken from the old country; he dressed up in his wedding suit; that is mostly why I remember it, because I made fun of him that time.

Q. You mean Mr. Jurgenson?

A. Yes sir.

1207 Q. Now Mr. Jacobs, these card statements that you have testified to and that you were not able to find, tell the court in substance what they contained, and especially with reference to the statements that were contained in the newspapers.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not the best evidence; no foundation laid; not within the issues, nor binding upon anyone of the defendants.

Objection overruled.

Each of the defendants excepts.

A. They were in a more condensed form, in the shape of a business card, where the deposits were all in one,—you might say it

corresponded with the published reports only it was more in a condensed form.

Q. And what else appeared on the card?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid; not the best evidence, and not binding upon any one of these defendants.

Objection overruled.

Each of the defendants excepts.

A. The capital stock, the surplus, the undivided profits.

Q. And do you remember the Capital stock as shown to be on those cards?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not the best evidence; no foundation laid; not within the issues, nor binding upon anyone of the defendants.

Objection overruled.

Each of the defendants excepts.

1208 A. The Capital stock was \$300,000.

Q. And did those cards purport to state the financial condition of the bank at the particular date for which the statements in the newspapers purported to give?

Mr. ROSE: Each of the defendants objects as calling for a conclusion of the witness on a matter not produced in court, or open to the inspection of the defendants or their counsel; no foundation laid; incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

A. Yes, sir.

Q. Now were there any names on the cards?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, not within the issues; not the best evidence; no foundation laid, and not binding upon the defendants.

Objection overruled.

Each of the defendants excepts.

A. Yes, sir.

Q. State what they were and how they appeared on the card.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not within the issues; not the best evidence; no foundation laid and not binding upon the defendants, and the witness not qualified.

Objection overruled.

Each of the defendants excepts.

A. Mosher and Outcalt and Walsh as officers; D. E. Thompson, Hamer and Yates and several others as directors.

1209 Q. Was Stuart's name on them.

A. Stuart's name was on there to.

Q. And Phillips?

Mr. ROSE: That's leading.

A. And Phillips. I can't remember all the names.

Q. Can you give us the form of the card, just about what it said, what it purported to state?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not within the issues; not the best evidence; no foundation laid, and not binding upon the defendants, and the witness not qualified.

Objection overruled.

Each of the defendants excepts.

A. Well it was in kind of a business card form, the names on one side and the statement of the bank on the other side.

Exhibit "ai" identified.

Mr. ROSE: Now we object to this form of making suggestions to the witness.

Q. I have your Exhibit "ai" identified by the reporter and will ask you to examine that and state to the court if the statement to which you have referred bore any resemblance to the exhibit which I hand you, in form or wording?

A. I don't think it was just in that form though.

Q. In what way did it differ?

Mr. ROSE: May I ask the court to inspect the document that they have and see what they use as a suggestion.

1210 (Counsel hands the card to the court.)

The COURT: I don't see where the matter will help us any. I think I know what the witness means to say, that is, as I understand his testimony the statement which he claims was lost, was an ordinary business card, giving a condensed statement of the condition of the Capital National Bank.

Mr. ROSE: Each of the defendants objects as wholly immaterial, incompetent, and irrelevant; leading and suggestive.

Objection overruled.

Each of the defendants excepts.

Q. What I wanted to get at was whether the card itself stated in words that it was the condition of the bank at the close of a certain date, which date agreed with the date of the published statement.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not within the issues; not the best evidence; no foundation laid, and not binding upon the defendants, and the witness not qualified.

Objection overruled.

Each of the defendants excepts.

A. Yes, sir.

Mr. THOMAS: We offer in evidence Exhibit "ai."

Mr. ROSE: No objection.

EXHIBIT ai.

United States National Bank of Omaha, Nebraska.

United States Depository.

Statement Close of Business Jan. 7th, 1911.

Resources.

Loans	\$6,496,273.67
United States Bonds (Par)	600,000.00
Other Bonds	789,390.00
Bank Building	300,000.00
Cash and Exchange	3,314,002.94
	<hr/>
	\$11,499,663.61

Liabilities.

Capital Stock	\$300,000.00
Surplus and Profits	764,493.05
Reserved for Taxes	11,242.47
Circulation	450,000.00
Deposits	9,673,028.09
	<hr/>
	\$11,499,663.61

Officers: M. T. Barlow, President; G. W. Wattles, Vice-Pres.; V. B. Caldwell, Vice-Pres., W. E. Rhoades, Cashier; G. E. Haverstick, Ass't Cashier; R. P. Morsman, Ass't Cashier; J. C. McClure, Ass't Cashier; C. F. Brinkman, Ass't Mgr. Credit Dept.

Directors: M. T. Barlow, A. D. Brandies, S. S. Caldwell, V. B. Caldwell, E. A. Duff, Thos. A. Fry, C. W. Lyman, Euclid Martin, A. Millard, E. M. Morsman, A. L. Reed, W. E. Rhodes, B. F. Smith, W. A. Smith, G. W. Wattles, C. E. Yost.

1211 Q. Now Mr. Jacobs, can you tell the court what reliance, if any you placed upon those statements that you refer to, that you saw in the papers, or those cards that were sent you?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no sufficient foundation laid to entitle any of this evidence to be given, and not binding upon the defendants.

Objection overruled.

Each of the defendants excepts.

A. It showed the standing of the bank.

Q. The question is what reliance did you place upon those statements?

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; no sufficient foundation laid to entitle any of this evidence to be given, and not binding upon the defendants.

Objection overruled.

Each of the defendants excepts.

A. I took full reliance on them that they showed the exact condition of the bank.

Q. State whether or not you believed them to be true.

Mr. ROSE: Each of the defendants objects as no foundation laid for such testimony, particularly so far as the cards are concerned, because the form or matter of the card is not in evidence, irrelevant and incompetent.

Objection overruled.

Each of the defendants excepts.

A. I believed them to be true.

Q. And would the bank of Staplehurst have made these
1212 deposits in the Capital National Bank from time to time, or permitted them to remain there at any time had they known that these reports or statements were untrue?

Mr. ROSE: Each of the defendants objects to that as assuming facts not proven; incompetent; irrelevant and immaterial, and calling for a mere conclusion.

Objection overruled.

Each of the defendants excepts.

A. No, sir, I would have them out the next day.

Mr. THOMAS: That is all.

Cross-examination.

By Mr. ROSE:

Q. You got some additional funds on account of that claim aside from what you got from the Comptroller of the Currency didn't you?

A. I think there was some, wasn't there?

Q. Do you remember how much you did get?

A. No, sir, I don't.

Q. Did you get any,—Mr. Jones is your business agent to receive any collections as the result of this law suit?

A. Yes, sir.

Q. And what dividends or any sums you got, you got through him?

A. No, I got them through Mr. Thomas.

Q. And did you get any payment on account of this Capital National Bank claim since the last trial,—since we tried this case in 1902?

A. No, I think not; I don't remember.

1213 Q. Did you have any report from Mr. Jones of his having made any collections?

A. No sir.

Q. Never told you anything about getting any money at Lincoln after the last trial?

A. No sir, I have had no report from him yet.

Q. How heavy a stockholder was Mr. Jurgenson in that bank up to the time of his death?

A. He had a half interest.

Q. How much did you have?

A. I had the other half.

Q. Who controlled the deposits, the president or the cashier,—who directed where your exchange accounts should be kept?

A. Well he was there part of the time; I done the book work myself mostly.

Q. The question was who controlled the making of your deposits, or who selected the correspondent banks, you or Mr. Jurgenson?

A. Both did; he done it part of the time.

Q. You didn't open the account with the Capital National Bank, did you?

A. Yes, sir.

Q. Personally,—you selected it when you started to do business with the Capital National Bank, you were the one that directed that, were you?

A. We done that both together, I suppose.

Q. You worked on the books?

A. Yes, sir.

Q. How old a man are you now?

A. Fifty four.

Q. What was the total amount of deposits that your bank sent to the Capital National Bank from 1886 down to the time the bank failed?

1214 A. At the time it failed?

Q. No, no; the total amount that you sent at all times, from the time you opened your account until the bank suspended?

A. I couldn't state that.

Q. Several hundred thousand dollars, or \$100,000?

A. All together?

Q. Yes, all together.

A. I don't know, I couldn't state that at all.

Q. Well give it approximately.

A. Couldn't do that either.

Q. What was your average balance with that bank then?

A. I couldn't say.

Q. Approximately, your average daily balance?

A. I couldn't tell you.

Q. You got statements every month which showed what your average daily balance was, didn't you?

A. Yes, sir.

Q. And a statement of interest credited based on the average daily balance?

A. I have got that here,—the monthly balance that is here some place.

Q. Was that a changing account,—made up of deposits and withdrawals?

A. Yes, sir.

Q. You aimed to keep enough there to take care of your exchange, did you?

A. Yes, sir.

Q. And to anticipate all the calls you would have for exchange, and you made those deposits mostly by forwarding your own exchange items,—you forwarded your drafts and foreign checks to the Capital National Bank, didn't you?

A. Yes, sir.

1215 Q. And ordinarily that would be the source of your deposits?

A. Yes sir.

Q. And they credited them to you and distributed them to the banks on which they were drawn for collection and payment?

A. Yes, sir.

Q. Well you deposited many times,—in the course of that period many times the amount that your final balance was?

A. Yes sir.

Q. And drew out many times what your final balance was?

A. Yes, sir.

Q. You had perhaps daily transactions with the bank?

A. Yes, sir.

Q. Now you say if any statements you saw had not in your opinion reflected a prosperous condition of the bank you would have withdrawn your entire deposit the next day?

A. Yes, sir.

Q. You wouldn't have then paid any attention to what the condition of the bank showed the year before that, or any previous report; if a new report showed bad you wouldn't have left your money in there because the statement of a previous period showed it good, would you?

A. I have not seen any that showed it bad; they were changed up and down, the same as all banks does.

Q. You have assumed here that if a statement had not reflected a prosperous condition of the Capital National Bank you would have pulled your money out the very next day while you could get it; that's correct isn't it?

A. Yes, sir.

Q. And of course that's the motive that actuates men ordinarily in business transactions, too, isn't it, and you would have done that under those circumstances, even though any of the previous
1216 reports might have shown that it was prosperous at a previous period, you would have done that just the same, wouldn't you?

A. I don't quite understand it yet.

Q. In respect to what you would have done about pulling your money out of the bank the next day after you became advised by a statement that it was not in a prosperous condition, you would have done that unequivocally wouldn't you,—you would have taken your money out if you saw a statement showing that the bank wasn't prosperous. That is true, isn't it?

A. I didn't state that; I stated that if the statement showed the

true condition of the bank, I would have drawed it out the next day.

Q. I understood you to say that if the statement had showed the bank not in a prosperous condition you would have drawn your money out the next day.

A. I don't think I stated that.

Q. Wouldn't you have done that?

A. I stated it this way——

Q. No, no. Now as a matter of fact, if you had known any one of the reports was untrue, you would have pulled your money out would you, the next day?

A. If I knew they were untrue?

Q. Yes sir.

A. Yes sir.

Q. And you would have done that, even though the previous report was true, wouldn't you?

A. Well how would I know that.

Q. If you knew the last report was untrue, you wouldn't leave your money in there because you thought a report made a year ago might have been true, would you?

1217 A. Well that is a odd question. How can I tell that. I wouldn't rely upon any bank that lied in its reports if I knew it.

Q. You wouldn't rely upon any bank that didn't reflect a proper condition in its report, would you?

A. Not if I knew it, no sir.

Q. And you were keeping your money in there at the last because every statement that came to you seemed to show a good condition?

A. I believed the reports to be true.

Q. And you also believed them to show the bank in a good condition.

A. Yes sir.

Q. And if the last report that came to you hadn't shown the bank in apparent good condition you then would have drawn your money out, wouldn't you?

A. Well it is like I stated. If I had knowed the condition if they had stated the condition the bank was in I would have drawed it out, yes sir.

Q. That is if the report had been true, and it had reflected the fact that the bank had had large losses and wasn't prospering you would have drawn your money out?

A. If the last report had come out with its true condition I would have drawn my money out.

Q. And you wouldn't have paid any attention to any previous condition of the bank?

A. No sir.

Q. You were interested in what the bank's condition was at the present month.

A. Yes, sir.

Q. And you didn't care what the bank's condition was at any time previous to that.

1218 A. No, that wouldn't be any business policy at all.

Q. What German papers did you get?

A. Had the Staats Zeitung, and part of the time the Freie Presse.

By Mr. THOMAS:

Q. Were any of those statements of the bank's condition contained in any of those German papers?

A. Just once in a while; I just seen a couple of them in there.

Q. You were asked about your interest in the Bank of Staplehurst at the time these deposits were being made in the Capital National Bank. How much stock did you have in the Staplehurst bank?

A. \$3,000.

Q. The Capital Stock of the bank was \$6,000?

A. Yes. No.—it was only \$5,000 I believe at that time yet. I don't remember now, we changed it.

Q. And did you do all the work in the bank?

A. Nearly all. Jurgenson was there part of the time. You know he was in the grain business to—

Q. Mr. Jurgenson didn't do any bookkeeping?

A. Not very much, no; off and on he did.

By Mr. ROSE:

Q. Did you know Mr. D. E. Thompson, personally?

A. No sir.

Q. Did you know Mr. Charles E. Yates personally?

A. No sir.

Q. Or Dr. E. P. Hamer, of Lincoln?

A. No sir.

Q. You never had any personal conversations with either of them about any subject whatever?

1219 A. No sir.

By Mr. THOMAS:

Q. Did you know them by reputation?

A. Yes sir.

Q. And what was their standing and reputation as business men and financiers?

A. They were reported as good business men, especially the directors and officers of the bank.

Q. Did you know of them by reputation,—that is, the directors?

A. Yes sir.

Q. You knew of Mr. Thompson?

A. Yes sir.

Q. And Mr. Yates?

A. Yes sir.

Q. And of Mr. Hamer?

A. Yes sir.

By Mr. ROSE:

Q. At that time Mosher and Outcalt bore splendid reputations as bankers over the country?

A. Yes, sir.

Witness excused.

* * * * *

1220 Mr. FRITZ BECKORD re-called for further cross-examination.

By Mr. BISHOP:

Q. Did you know Mr. Yates the defendant, Charles E. Yates?

A. I know and seen him a part of the time,—and seen him and know him part of the time and then not know him again.

Q. Simply knew him by sight?

A. Yes sir, by sight.

Q. Did you know Dr. Hamer?

A. I have seen him by sight.

Q. Did you have any personal acquaintance with either one of them?

A. No sir.

Q. Never had any conversation or any talk with either of them?

A. No sir.

1221 Mr. THOMAS BAILEY called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows, to wit:

Direct examination.

By Mr. THOMAS:

Q. Where do you reside, Mr. Bailey?

A. Pleasant Dale, Seward county, Nebraska.

Q. How long have you resided at Pleasant Dale?

A. I came there in,—I think it was in the summer of '69.

Q. And that has been your residence ever since?

A. Yes sir.

Q. What has been your occupation during that time?

A. Farming.

Q. Have you been engaged in grain buying any?

A. Some.

Q. And during the years prior to January, 1893, how frequently were you in Lincoln?

A. Oh, every day or two,—most all the time but Sunday.

Q. Go down on the morning train and back in the evening?

A. Yes, sir.

Q. Then you were not yourself, practically engaged in farming?

A. Most of the time I saw that it was done all right.

Q. Did you know of the Capital National Bank of Lincoln?

A. Yes, sir.

Q. And knew of that institution while it was in existence at Lincoln, Nebraska, and doing business there?

A. Yes sir.

Q. And did you know the officers and directors of that bank personally, or by reputation?

A. I knowed some of them personally, and some by reputation?

1222 Q. What ones did you know personally?

A. I knowed Mr. A. P. S. Stuart; I knowed Richard Outcalt since he first came to Lincoln; I knowed Mosher; I knowed Mr. Thompson here by sight, I never had any acquaintance with him and I knew Mr. Hamer and Mr. Yates by sight. I knew Mr. Walsh very well.

Q. Now during the year 1892, did you do any business with the Capital National Bank?

A. Yes, sir.

Q. What was the nature of that business?

A. Well sir, I put some money in there.

Q. About when?

A. I will have to refer to my statement here in regard to that; it is so long since,—I can remember the time I put it in there, but I can't remember the date. (Witness refers to paper.) This will kind of refresh my memory probably. This is a Receiver's certificate of the Capital National Bank of Lincoln Nebraska.

Mr. BISHOP: The defendants object to him stating what that paper is.

Q. Just tell us when you deposited your money and how much.

A. October 11th, 1892 I deposited.

A. I deposited \$10,000 October 11th, 1892.

Q. Give us the next item.

A. I deposited a certificate of deposit from the First National Bank,—

Q. When was the next item?

1223 A. I have got to look at this to remember the dates. (Witness refers to paper.) It was December 28th, 1892.

Q. How much?

A. I deposited \$2,000.

Q. And did you make any further deposits after that?

A. I don't think I did.

Q. Did you make any withdrawals of any part of that?

A. Yes sir, I withdrew \$500, I think it was on the Thursday or Friday that the bank closed on Saturday night.

Q. Is that all you withdrew from those deposits?

A. That's all I withdrew that I remember of.

Q. Have you received from the Receiver any dividends on those deposits?

A. Yes, sir.

Q. State the percent of dividends and when paid.

A. I have drawn out all together seventeen per cent. September

7th, 1893 I was paid 10% ; April 25th, 1894 5% and July, 1901, 2%.

Q. Is that all?

A. That's all I got from the Receiver of the Capital National Bank to the best of my recollection.

Q. Now Mr. Bailey, prior to the time that you made this deposit in the Capital National Bank, did you have any information as to its condition,—that is its financial condition?

A. Yes, sir.

Q. Where did you get that information?

A. I got it prior to the time that I deposited this money; I used to take the newspapers in Lincoln, the Lincoln Call, and the Semi-Weekly Journal part of the time. I used to read the papers every day in fact.

1224 Q. Had you finished your answer?

A. No sir. I went into the bank with Mr. Richards, who was an old friend of mine that used to keep a bank there at the corner of "O" and 10th, and then he built a block down on—

Q. First I want to ask you about the newspapers that you saw. What did you see in them with reference to the condition of the bank?

A. Why I read the statements, and I knew most of the directors in the bank, and the officers, and I knew them by reputation, and some of them personally, and knew them as good business men.

Q. Did you see the statements of the condition of the Capital National Bank that were published in the newspapers, which you have testified to?

A. Yes sir, I saw the statements and I read them; I was a reader of the papers every day.

Q. What information did you get from those statements?

1225 A. Well that is all the information I could get in regard to any of the banks, what their printed statements was in the papers, and on the cards that the officials of the bank there when I went in,—

Q. At the time you made your first deposit of \$10,000 you may state where you went to make the deposit?

A. I went in the Capital National Bank.

Q. And what occurred after you went into the bank?

A. Well sir, there was one of the clerks there in the bank gave me a card with the statement of the standing of the Capital National Bank of Lincoln, Nebraska, which I had seen several of them previous to this time, and I saw it was what I supposed was a good statement,—

Q. What did the statement disclose, the one that you saw, and what impression did it have upon your mind, and how did it affect your transaction with the bank that day?

1226 Q. You say they handed you a card. What did that card contain, Mr. Bailey?

Q. You say they handed you a card, Mr. Bailey?

A. Yes, sir.

Q. Have you that card?

A. No, sir.

Q. What did you do with it?

A. Well sir, I don't remember; I think I had it here at the time of the last trial and I haven't seen it since; I supposed that would be the last of it,—the last I would need it any more.

Q. But since you have been here attending the trial for a week or two, have you made search for it?

A. No sir, I haven't made any search for it.

Q. Have you got it at home?

A. No sir, I know I haven't; I looked for it,—I looked for several things and couldn't find them.

Q. When did you see it last?

A. I think it was about the time the last suit was tried here in—I think it was in 1902.

Q. Have you seen it since then?

A. No sir.

Q. Have you looked for it since then, or been able to find it?

12 A. No sir, I haven't been able to find it.

Mr. BISHOP: Have you looked for it,—you haven't looked for it have you?

A. No sir I haven't looked for it.

Q. Where did you leave it at the time of that trial?

A. I think I left it here; we had them all together, the old papers,—we had them down here at the old courthouse, to the best of my recollection.

Q. Who did you leave the card with?

A. I don't know that.

Q. Have you seen it since that trial?

A. No sir.

Q. Have you—is it at your home?

A. No sir, I haven't got it at home.

Q. Is it in your possession?

A. No sir.

Q. Do you know where it is?

A. I don't know where it is.

Q. Would you have any idea where to look for it?

A. No sir.

Q. You may tell the court what that card contained,—the one that was handed to you when you went into the bank that day.

1228 A. It contained a statement of the bank; the name of the officers and directors of the bank.

Q. Did you look it over?

A. Yes, sir.

Q. Now, Mr. Bailey, did you believe that report to be true or otherwise?

A. Of course I thought it was true.

Q. Would you have made that deposit in the bank or either of them if you had known that that report was not a true and correct report of the condition of the bank?

A. I certainly would not.

Q. What did that card contain as to the capital stock of the bank?

1229-1237 A. It contained the amount of capital stock to be \$300,000.

Q. And did it contain anything else that you remember of?

A. It read about the liabilities and the resources and had the names of the directors and the officials on it.

Q. What names of directors appeared on the card,—what ones do you remember?

A. R. C. Outcalt, Mosher, A. P. S. Stuart, Mr. Hamer, Yates and D. E. Thompson.

Q. Was Mr. Phillips' name on them?

A. Yes, I believe Mr. Phillips was on; I knew Mr. Phillips personally; I think his name was on.

Mr. THOMAS: That is all.

Cross-examination.

By Mr. BISHOP:

Q. Mr. Bailey, you say you had certificates of deposit from the First National Bank which you put into the Capital National Bank?

A. I did; I had some; I had one for \$10,000.

Q. That amount you had taken out of the First National Bank?

A. Not at that time I hadn't, but I did right after I went in the bank and inquired about it.

* * * * *

1238-1242 WALTER T. SCOTT re-called for further cross examination.

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1243 Re-direct examination.

By Mr. THOMAS:

Q. Mr. Scott, were you here in November of the last year?

A. Yes, sir.

Q. The latter part of November?

A. Sometime in November, I don't remember what day it was, but I registered at the hotel I guess you could get the date there.

Q. Is that the time you signed this subpoena, or paper I handed you?

A. I think it was.

Q. You spoke of having some notes. What notes are those?

A. Why it is some that I paid to the Capital National Bank along in '90 and '91,—sometime after I embezzled as he tries to make out. I think if I had embezzled anything I couldn't have borrowed money as I did for three or four years afterwards from that bank; and then, as I understand it a man to embezzle money must also handle the money; I never handled a dollar of the bank's money any time I was in there; I had nothing to do with the cash at all.

Q. Did you handle the notes or securities of the bank?

A. No sir. All I handled was the individual deposit account. I kept the whole of the individual deposit accounts. I had nothing whatever to do with any securities of the bank, or money of the bank, or anything that could be converted into money.

Q. You may hand me those notes you have just put in your pocket.

1244 A. I have actually been accused of sharing in the boodle of the bank when it was busted. I was out of the bank five years and kept my own accounts there; I never got a dollar out of it.

Q. Were you ever employed as an expert accountant in the trial of any cases in court, which involves the books of the Capital National Bank?

A. No sir.

Q. Or any other bank?

A. I was employed once as an expert on the books of the Antelope county bank.

Q. Who employed you in the case?

A. A man named Smith.

Q. Who was the attorney in the case?

A. I don't recollect now who was the attorney.

Q. Did you ever do any work of that character for Mr. Rose, of counsel in this case,—counsel who examined you?

A. I don't remember of it,—Mr. Rose, I think I did do some work for you once didn't I,—it was either you or Mr. Love.

Mr. ROSE: You never did any work for me.

Q. I now hand you Exhibits "Ak" to "Aq" and will ask you what those exhibits are?

A. They are notes given for money I borrowed of the bank. I think you will find everyone has got "D" on; they were endorsed by Mosher and discounted and you will find each and every one of them either paid, or taken up and renewed the day they were due. I never let any of my paper at the bank run over due.

Q. Do each of these notes bear your signature?

A. They bear my signature, and only my signature because they were secured by the mortgage I give on my property.

1245-1263 Q. Were those notes all discounted by the Capital National bank?

A. They were all discounted; you can see the "D" on them now, and if you will look on the back you will see Mosher endorsed them.

Mr. THOMAS: That's all.

Re-cross examination.

By Mr. ROSE:

Q. Now in respect to this answer by way of argument;—you suggested that an embezzler wouldn't be able to borrow from same bank Suppose he had his hooks on the president of the bank?

A. My hooks,—what do you mean?

Q. By carrying the paper that the president had forged somebody's name to and taken out of the bank,—you might go to him and shake him down for a loan?

A. If I had any such paper that I could have used in the bank, I think I could have stuck him for a pretty good sum of money to keep quiet couldn't I. I wouldn't have had to owe him anything.

Witness excused.

* * * * *

1264 Mr. BISHOP: The defendants offer in evidence the testimony of Mr. R. Dorgan, taken at the former trial, and found at page 1121 of that Bill of Exceptions.

Direct examination read by Mr. Bishop as follows:

Mr. R. DORGAN, called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct Examination by Mr. DEWEESE:

Q. Where do you live?

A. Lincoln, Nebraska.

Q. Where did you live in the fall of 1891 and 1892?

A. Lincoln, Nebraska.

Q. State whether or not you did any business for the Capital National Bank during those years?

A. I did.

Q. You may state whether that business had any relation to the loaning of money by E. W. Mosher, who then lived at York, in York county?

A. Yes sir.

Q. Explain what Mr. E. W. Mosher, what his business was with reference to the Capital National Bank at that time?

A. He was loaning money on real estate.

Q. For whom?

A. For the Capital National Bank.

Q. And do you know whether the money that he thus loaned was sent to him from the Capital National Bank?

A. Yes sir.

1265 Q. Did you have anything to do with that business, and in checking up his work, and doing anything for the Capital National Bank?

A. Yes sir.

Q. What was it, just explain to the jury what that was.

A. I viewed the land, and passed on the paper, and made reports on certain loans.

Q. Do you know what arrangements existed between the bank and E. W. Mosher with reference to how the money, that he handled and loaned was to be accounted for,—what evidence the bank had of that?

A. Yes, sir.

Q. You may just explain what you know about it.

A. He got the money in advance of the loan,—five, six or ten thousand dollars at a time, and gave his note for the money.

Q. Do you know what security,—do you know anything about the security of what endorsement was required on those notes?

(Question withdrawn.)

Q. Just explain that whole arrangement, if you know about it,—just what you know about it,—so we will know what was done.

A. Wallie Mosher,—C. W. Mosher guaranteed the paper, Ed's paper.

Q. To the bank?

A. To the bank.

Q. What was done with the paper, that was taken, when loans were made at York, by and through Mr. Mosher?

A. Why it went to the bank.

Q. To the Capital National Bank?

A. Yes, sir.

1236 Q. I will ask you whether those notes you speak of executed by Edwin W. Mosher, were his personal indebtedness, or was for money that he obtained for loaning as the agent of the Capital National Bank, there in York, if you know?

A. Yes, sir.

Q. You may explain how that was.

A. I didn't understand the question.

Q. (repeated). I will ask you whether these notes you speak of executed by Edwin Mosher, were his personal indebtedness, or was for money that he obtained for loaning as the agent of the Capital National Bank there in York.

A. This money was advanced for loaning on real estate in York county, and Hamilton county, and those counties close to York.

Q. Well you may state for whom that money was loaned.

A. It was loaned for the Capital National Bank.

Q. I will ask you to state whether you know if in that business some real estate had been acquired?

1267 A. Yes, sir.

Q. What did you have to do with reference to that real estate if anything?

A. Well I was looking after collections in a general way for the bank.

Q. The question is, if you had anything to do with this real estate, in listing it, or checking it over, or finding out in any way what it was, or what amount it was.

A. Yes, sir.

Q. What did you do?

A. Well when they would have to take a piece of land in, I would go out and look at it, and see what it was worth and inquire about it, and look at the soil and location, and view the land.

Q. State about how much of this land there was?

A. There was a lot of it, I would say about forty or fifty quarter sections.

Q. Located in what counties?

A. Well the most of it was in York county, some of it in Hamilton, and some of it,—I don't know, in Kearney or Buffalo, some of those western counties. I couldn't remember all the counties, they had so much land.

Q. Do you know what was done with that land?

A. Yes, sir.

Q. State to the jury what became of it?

A. It was turned over to the bank.

1268 Q. By deeds?

A. I should say, Yes, sir.

Q. About when was that do you know, prior to the failure of the bank, or after?

A. A short time before the failure of the bank.

(The Cross Examination of this witness is offered later by the Plaintiffs, and may be found at page 1472 hereof.)

1269 Mr. BISHOP: The defendants offer to read in evidence the testimony of George Sanford given at the former trial of this case, and found beginning on page 307 of that Bill of Exceptions. Direct examination read by Mr. BISHOP as follows:

Mr. GEORGE SANFORD called on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination by Mr. DEWEESE:

Q. What is your full name?

A. George Sanford.

Q. Where do you live?

A. Council Bluffs, Iowa.

Q. Did you ever do any business for the Capital National Bank of Lincoln?

A. Yes sir.

Q. About when was that?

A. In 1892 and 1893.

Q. I will ask you whether it was with reference to loans that had been made by E. W. Mosher at York?

A. Yes sir, it was.

Q. What was the business that you did, explain to the jury.

A. I was employed by the bank to go to York and look up their interests there. I collected as much as I could and converted the property into cash.

Q. And did you go to York?

A. Yes sir.

Q. And what was it that you did?

A. I acted as collector. Looked up their property and converted it into cash.

1270 Q. What was the nature of their property?

A. Well it consisted of Bills receivable, real estate and other personal property.

Q. How did this real estate accumulate, and who had made these loans that you speak of?

A. The real estate was accumulated through loans made at York by Edwin W. Mosher.

Q. For the bank?

A. Yes sir, for the bank.

Q. What was the general character of these bills, and notes that you found there, who in a general way had made them?

A. The farmers.

Q. Farmers in the community there?

A. Yes sir.

Q. Was it confined to York county alone?

A. No sir, not altogether in York county, there were several counties.

Q. Did you investigate these notes, and the farmers who owed them and see about settling or collecting or securing them?

(No answer shown)

Q. Tell the jury just what you did, who it was you were dealing with, who were the people that had given these notes, so far as you can remember, what was the character of the loans, what kind of security it was, and all about it.

1271 A. The loans in York county were principally loans to farmers and cattle feeders. Outside of York county I should judge they were accumulated through real estate loans principally although there were some loans made outside of York county that were not secured by real estate.

Q. State whether you made an inventory of the whole business?

A. I made an inventory in the fall of '92, about the first of January, of the assets that they were interested in at that office of York.

Q. What did you do with the inventory?

A. I sent it to the Capital National Bank at Lincoln.

Q. You may state more definitely how this real estate had been accumulated or acquired, and in whose name did you find it from the papers that came into your possession there in your work?

A. When I first went to York this real estate was in the name of Edwin W. Mosher, and it had been accumulated through mortgages given Edwin W. Mosher, and in some instances had been deeded to him in settlement.

Q. Now then what was done by you in your work there for the bank in reference to that real estate, and to the notes and mortgages of all characters that you found there?

A. In regard to the notes and mortgages I proceeded to collect them as fast as possible, and remit the proceeds to the Capital
1272 National Bank. And the real estate I looked after it, platted it; put a price on it, and put it on the market.

Q. What was done with reference to deeding that real estate?

A. The real estate was deeded to the Capital National Bank through Mosher and Outcalt:—first deeded to Mosher and Outcalt and they deeded it to the bank.

Q. And that that had been in the name of Edwin W. Mosher?

A. That was deeded to Mosher and Outcalt and then to the bank. Deeded to Mosher and Outcalt by Edwin W. Mosher and wife.

Q. State to the jury about how many quarter sections of land there were of that land.

A. About fifty quarters.

Q. Fifty quarter sections?

A. About fifty quarter sections.

Q. State whether there was any personal property that had been acquired in that loaning business through E. W. Mosher?

A. There was no personal property except the office fixtures and the property on the horse ranch, which was turned over to the bank.

Q. The horses were turned over to the bank and the ranch to?

A. Yes sir, and sold by the Receiver.

Q. Do you know how much the horses sold for?

A. Yes, about.

Q. State the amount.

1273 A. About \$10,000.

Q. What character of horses were they?

The Plaintiffs object as calling for a conclusion of witness. Objection overruled. Plaintiffs excepts.

A. Standard bred horses, stallions and brood mares, and some colts.

Q. Where was the ranch located, do you know?

A. About two and a half miles northeast of York.

Q. Did it have any particular name?

A. No. I believe he did have a name for it, but I have forgotten.

Q. Did you make any inventory of the value of this stuff, both the real estate and the chattels and notes that were turned over to the bank under your employment?

A. Yes sir.

Q. I will ask you whether, while you were in the employ of the bank there looking after that business, you sold or caused to be sold any of the lands that you speak of for the bank?

A. Yes sir.

Q. And what did you do with the proceeds?

A. I think I only sold one piece, and we only got the matter in shape so that we could dispose of that about the first of January 1893. This piece was sold to C. W. Cowan of York, and in fixing up the title, the matter ran along until the Receiver took hold of the bank, and he wanted the sanction of the Receiver to that sale, although the deeds had been deposited, and the result of it was that I never really disposed of it; they were disposed of by the Receiver of the Capital National Bank.

1274 Q. Was that the Douglas farm?

A. No, that was the Daniels farm.

Q. Did you personally know, or have anything to do with the disposition the Receiver made of the balance of the lands?

A. I never knew, no sir. I left York about that time.

Q. You quit the business when the Receiver commenced?

A. Yes sir; shortly after. I was there possibly a month after he took charge. This personal property had to have attention and there was no one to take charge of it and look after it. I was relieved as soon as he could get around to it.

Q. What did you do with it?

A. With the personal property?

Q. Yes, with what remained after the Receiver commenced.

A. I turned everything over to the Receiver.

Q. I will ask you to state in your investigations of this property there that had been handled by E. W. Mosher for the bank, you found some judgments that had been obtained on paper?

A. Yes, sir.

Q. What became of these judgments?

A. I don't think I ever settled up any of them.

Q. What was done with them, was there any assignment of them or anything of that kind, or in whose name were they taken?

A. I couldn't answer that question intelligently.

Q. How many of those judgments were there?

A. I couldn't say.

Q. Do you know whether they went to the bank or not, whether they were turned over?

A. Over to the Capital National Bank or not?

Q. Yes sir.

1275 A. No, I don't really.

Q. I will ask you to state whether you listed them, and reported them to the Receiver or to the bank?

A. I didn't invoice them because I considered them worthless.

Q. The judgments?

A. Yes sir.

Q. Were there any foreclosures?

A. None pending.

Q. State whether, in reference to your work for the bank, in reference to this property, what you did if anything in regard to the payment of taxes, and the expenses of taking care of the property, and who furnished the money to do that?

A. After the first two months that I was there, I took charge of the property; paid all taxes, and paid the expenses of the horse farm; paid all the help, and made out monthly statements and sent that statement to the Capital National Bank the first of each month. I paid this money out of collections, and when I didn't have a sufficient amount on hand out of the collections I drew on the bank for the money to pay the expenses.

Q. Capital National Bank?

A. Yes, sir.

Q. I will ask you whether you handled any of the notes that had been accumulated in the making of these loans?

1276 A. Yes sir, I handled all that were in the York office.

Q. State whether you handled any that were sent to you by the Capital National Bank, that had been endorsed over to them?

A. Yes sir, I did.

Q. Were they all endorsed over?

A. Yes sir. I wouldn't say all. Some of that paper was taken on Capital National Bank paper direct, and some of it was taken on Mosher's paper and endorsed over to them.

Q. Do you remember the farmer by the name of Tighe, and the amount of the judgment that was obtained against him?

A. I don't remember, no sir. I think he had left the country when I went up there.

Q. Do you remember the judgments against Greene?

A. I remember something about it. I don't remember the amount though.

Q. Do you remember whether that was secured by a loan on real estate and afterwards paid to the Receiver?

A. I couldn't say.

(The Cross Examination of this witness is offered and read in evidence on behalf of the Plaintiffs, later. See page 1469 hereof.)

1277 Mr. D. E. THOMPSON produced as a witness on behalf of the defendants, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. ROSE:

Q. You are defendant in this case?

A. Yes, sir.

Q. Where is your place of residence?

A. At this time, in Mexico City.

Q. Where have you heretofore resided?

A. In Lincoln, this state.

Q. Were you one of the directors of the Capital National Bank?

A. I was.

Q. For what period of time approximately?

A. I went in there as director when the bank was organized and I was there until it was finished: from '84 until 1893.

Q. Did you serve in that capacity as a gratuity, or did you receive compensation?

A. I served without any sort of compensation.

Q. Did you hold any other office in the bank except that of director, during any part of that time?

A. No sir, I did not.

Q. Were you ever an employee, director, officer, stockholder, or otherwise connected with the Marsh National Bank, or with Marsh Brothers Mosher & Company?

A. No sir, I was not.

Q. The date of your connection then dated with the first existence of the Capital National Bank, after the bank had been changed to the Capital National Bank?

1278 A. Commencing with the Capital National Bank.

Q. How much stock did you at first acquire in the Capital National Bank, when it started with a capital of \$200,000?

A. My first holdings—the holdings I acquired at that time were \$14,000, face value.

Q. Did you pay for your stock to the bank?

A. I did; paid in cash.

Q. And at what rate did you purchase your stock?

A. I paid for that stock a premium of nine points; 109 on the dollar for it.

Q. When the stock was increased, in 1886, to \$300,000, did you take any portion of the increase?

A. I did.

Q. How much?

A. I took \$11,000 of it.

Q. Did you pay for that stock?

A. I did, I paid cash for it.

Q. How much did you pay for it?

A. I think I paid for that a premium of fifteen points; \$1.15 for each one dollar in value.

Q. Do you remember what other persons went into the directory of this bank originally, that is those who had not been previously connected with it, at the time you did?

A. Well I doubt if I could name more than a few of them.

Q. Name those that you remember.

A. W. W. Holmes, Professor Stuart, H. J. Walsh,

1279 Q. Wasn't he merely Vice-President—didn't he have the title of Vice President as an honorary title without belonging to the directory—without being a director?

A. Well Walsh wasn't a director in the bank; he was vice president of it without belonging to the directory; at this moment I don't remember who the others were.

Q. You knew them at the time?

A. Oh, yes, they were all men that I knew.

Q. At the time you became connected with this bank you may state what knowledge or information you had of the affairs—

A. May I answer further as to the—

Q. Yes, certainly.

A. Mr. Yates was also one that went in at that time.

Q. Mr. Moore soon after?

A. I think Moore came in soon afterwards; not at that time, but soon afterwards as I remember it.

Q. Now at the time you became connected with the Capital National Bank, what was your knowledge as to the bank's assets other than the capital which the new stockholders had contributed?

A. I had no personal knowledge; there was a committee appointed at that time—

MR. NORVAL: Now we object to that as not responsive.

Q. State what, if any, means were employed to endeavor to ascer-

tain the condition of the bank at the time you went in and put your money in as a stockholder?

A. There was a committee appointed to check over and take over the assets of the old bank.

Q. Do you remember who that committee was?

A. That committee consisted of W. W. Holmes, Professor A. P. S. Stuart and Mosher, as I remember.

1280 Q. Do you remember now whether you received a report of that committee?

A. Yes, I think that committee made a report.

Q. Oral or otherwise?

A. I think it was an oral report.

Q. What is your best recollection as to what was reported?

Mr. THOMAS: That is objected to as hearsay and immaterial.

A.—no, hold on, I think that was a written report, and it said in effect——

Mr. NORVAL: We object to the contents.

Q. Well you may just state whether—what if any item of assets was discussed there, as being doubtful assets, if any?

A. The question of an asset of the old bank was under consideration—an asset, or a claim probably it would be called, against Donnell, Lawson & Simpson of New York, who had been the correspondents, I think, of the Capital National Bank——

Q. Or Marsh National Bank?

A. Marsh National Bank, I should say, was discussed at the time of the first meeting.

Q. Well you may state what was said about it.

A. Mosher said that was a matter that didn't properly belong to the new bank; that the New York bank had failed a short time before, and that he and Outcalt would take care of it.

1281 Q. Now was there any other asset reported of a questionable character, or that was rejected?

A. No, sir, I think not.

Q. Just state what was your knowledge and information, if any, as to whether the Donnell, Lawson & Simpson account was cared for by Mosher and Outcalt?

A. Well I have no personal knowledge except the report of the committee from time to time of the condition of the bank.

A. I have no personal knowledge of what became of it.

Q. And what if any report was made to you either by Mosher or Outcalt, or that committee?

A. Well it was reported that it was taken out of the bank.

Q. And did you have any knowledge to the contrary at any time?

A. I never did.

Q. Well what was your belief as to whether or not it had been taken out?

A. Well, I believed that it had been.

Q. Now what, if any knowledge did you have as to whether that bank had previously sustained losses on account of the paper of Marsh Brothers and their associated, subsidiary or connected companies?

A. I had no knowledge whatever of it.

Q. What if any knowledge did you have about the bank having sustained any losses previously on account of the item of stocks and bonds?

1282 A. I had no knowledge of their sustaining losses on anything.

Q. Or on account of the item of exchange?

A. I had no knowledge.

Q. I want to ask you, Mr. Thompson, if you had had any knowledge that that bank was without any capital, whether you would have put your money in there and subscribed to the stock?

A. I certainly never would have done it.

Q. Did you know at that time who had been the managing officers of the Marsh National Bank?

A. Well I knew simply as I would know anything that I hadn't had any acquaintance with at all; I never had had any holding with the bank.

Q. Had you ever been a customer or depositor of that bank previously in any form?

A. No, sir.

Q. Had you any extended previous acquaintance with either Mosher or Outcalt?

A. No, I hadn't.

Q. At that time had you known enough of their reputation, to know what standing they had as business men in the community?

A. Well their standing was good.

Q. Did you have any acquaintance,—Yes or No.

A. Yes, sir.

1283 Q. Well what within your knowledge was the standing and reputation of those men for business character and integrity?

A. It was first class.

Q. Now when the new bank organized, did you attend the meetings of the directors, the regular meetings?

A. You mean at the time of the organization, or at other times?

Q. Yes sir, at that time, and afterwards.

A. I attended at the time of the organization, that is the changing into the Capital National Bank.

Q. Did you elect officers then?

A. Yes, sir.

Q. What officers did you select?

A. Mosher was president and Outcalt was cashier, and Mr. Walsh was the Vice president. I think those three were all.

Q. Did you appoint any committees of the board for any purpose?

A. Oh well,—if you consider them as officers of the bank. At that time and for the purpose of taking over the assets of the old

bank into the new, there was a committee appointed which was a standing committee and served as an Executive committee until others took their places.

Q. What was that committee, the executive committee?

A. That committee was Professor Stuart, W. W. Holmes and C. W. Mosher.

Q. Were you at that time personally acquainted with Prof. Stuart and W. W. Holmes?

1284 A. Well I had known Mr. Holmes a long time, and Prof. Stuart some little time.

Q. Were you acquainted with their standing for business character and integrity at that time?

A. Yes sir, I was.

Q. What was their reputation in that respect?

A. Well no men had better than they had.

Q. It was good then?

A. First class.

Q. Do you know what the business of these men were at that time and had been previously; if so state.

A. Well, Holmes had for all the years I had known him, had been handling money—loaning money; he was a wealthy man. Prof. Stuart had been doing the same thing during the time I had known him, which was a few years. Prof. Stuart, I think, had, before coming to Lincoln, been a Professor in some university; I believe he had been.

Q. Were you at all acquainted with their pecuniary standing and resources?

A. Well by reputation only. I had no actual knowledge of how much money they possessed.

Q. What was their pecuniary reputation and standing?

A. Their reputation was that they were very wealthy.

Q. And were you acquainted with their general habits of life?

A. Perfectly good.

Q. Frugal and steady?

A. Perfectly right in every respect.

Q. Now upon what officers, if any, did you delegate the
1285 power of immediately directing and conducting the bank's business?

A. It seems to me the active officers of the bank were—first of course was the election of the directory, and then the active officers of the bank, and then this executive committee.

Q. Who were the active officers who had charge and control of the institution?

A. The active officers were Mosher as president and Outcalt as cashier.

Q. You may state whether it was intended that they should devote their entire time to the business of the bank, or not?

A. Why it was so understood at the time; that was the arrangement.

Q. Now in actual practice in the conduct of the affairs of this

bank from the time it entered business under the name of the Capital National Bank, who, to your knowledge, immediately and directly conducted and administered the bank business of the institution?

A. Mosher as president, and Outcalt as Cashier, and for several years Professor Stuart and W. W. Holmes as executive committee, and later Dr. Hamer followed Mr. Holmes; some little time 1286 after the death of Mr. Holmes, he succeeded him.

Q. How much of your personal time did you devote, if any, to the affairs of the bank and the administration of the bank?

A. None at all, except to attend meetings when I was in town. I was much of the time away from Lincoln, but when I was there I gave time enough to attend their annual meetings.

Q. What personal effort on your part did you make to ascertain the condition of the bank?

A. Well all the effort that could be made by canvassing the situation with the directors and executive committee who were a member of the directory at the time of the meetings.

Q. Did you ever have any other source of inquiry?

A. No sir.

Q. The bank examiners or the officers?

A. I will qualify that. The bank examiners were both men—one following the other—that I knew very well, and I always asked them the situation as applied to the bank after they had made examinations whenever I would meet them.

Q. State whether or not at any time you called for, either called for or received reports of the condition of the bank by the president or the cashier?

A. Well at the meetings they were always called for and always received.

Q. Now in respect to the matter of dividends. Were you present at any time when the board of directors ordered dividends declared?

A. I was.

Q. And at such times did you have any records of the condition of the bank and its net earnings?

A. We always had them.

1287 Q. Now you may state whether at any time when you were present and took part in the proceedings, when dividends were declared, there was any period of time when the reports of the officers to you did not show that there was a net profit exceeding the amount of the dividends?

A. You ask if we ever declared a dividend—

Q. When there wasn't a showing of a net profit exceeding the amount of that dividend?

A. No sir,—never.

Q. And enough to put the requisite sum to surplus?

A. Always enough to put what was required to surplus and had something over.

Q. At the time you acted in respect to declaring dividends what was your opinion and belief as to the truth of the showing?

A. There was always a statement made by the officers of the

bank and laid on the desk where the directors met showing the gross and net earnings of the bank for the period that had passed since the meeting before.

Q. The question was what belief or reliance you had upon the truth of that personally?

A. Why it was considered and thought to be absolutely truthful.

Q. So far as you thought yourself?

A. I had no question about it; thought it was a truthful statement, of course.

Q. You may state whether from your inquiries of the bank examiners you ever, from that source, obtained any information that would lead you to infer that the bank was not pecuniarily solvent?

1288 A. No. On the contrary the information I always got from them was always good.

Q. What was your personal belief from the time the bank was organized until it suspended as to the personal character and integrity of C. W. Mosher, and his skill as a banker?

A. My opinion was the same as the opinion of the people of the town.

Q. Just state what it was.

A. I thought he was perfectly correct.

Q. What was your belief as to his pecuniary standing up to the time of the suspension of the bank?

A. I believed him to be a wealthy man.

Q. What was your personal belief and opinion touching the integrity and honesty and skill of R. C. Outcalt as an officer of the bank, and his skill as a banker?

A. My belief in him was the same as it was in Mosher.

Q. Just state,—how did you regard him?

1289 A. I regarded him as an upright and capable officer, and a man of a good deal of wealth.

Q. And until the failure of the bank how were the two men regarded generally in the community in which they did business?

A. As business men,—as bankers?

Q. Yes.

A. Very highly.

Q. And how, personally, did you regard the standing of your fellow directors in the bank, other than the president and cashier?

A. Well, very highly. I thought I was the cheapest one of the bunch.

Q. Now I suppose you have attested some of the official reports of the institution, as director, have you?

A. I never refused to attest any of them for meetings I attended.

Q. Or if sent to you outside of any meetings?

A. I don't think I ever attested any for meetings that were held when I was not present.

Q. But they didn't have to have a meeting for a report. I mean attesting a report that is sent on to the Comptroller.

A. I beg your pardon. No, the reports to the Comptroller are not made at meetings, of course.

Q. Did you attest any of those?

A. Yes, always when I was asked to do it, at times when I was in town.

Q. Now what, if any, precaution did you take to ascertain the correctness or integrity of the reports before you attested them?

A. Well I don't think ever I attested a report without asking the cashier,—or asking Mosher,—I think Mosher always brought them to me for attestation—this is right, is it, and the answer was Yes and I attested it.

1290 Q. Did you ever attest any that did not appear to have been previously sworn to as correct by either the president or the cashier of the bank?

A. No they were always sworn to before being brought to me.

Q. What would be your honest belief in the correctness of the statement if sworn to by these men?

A. I believed them to be correct.

Q. Did you believe so at that time?

A. I certainly did.

Q. Now did you ever look over, or check over any of the books of that bank?

A. No, I never did.

Q. Did you ever go back in the work room where the clerks and servants of the bank were working on the books and look over them there?

A. No.

Q. Did you ever examine the archives and securities of the bank for any purpose?

A. I never did. That was left to the executive committee, always.

Q. Did you appoint anyone to do that duty, or participate in the appointment?

A. The directors appointed the executive committee, whose duty it was to do that.

Q. Mr. Thompson, what were your educational qualifications as a bookkeeper and accountant? Just give enough of your early history,—your early life,—enough of the circumstances of your early life before entering into active life to indicate what opportunities and qualifications you had in that line.

1291 A. Well does the court want the story of my life?

Court: Not in detail.

Q. Enough to show your circumstances and how you entered business and how you were equipped for bookkeeping and accounting, when you entered the activities of life.

A. Well sir, my father and mother both died before I was nine years old; until that time my home was in the country where there were no schools, or school privileges except the country schools. That was a mile and three quarters from where I lived. After they died—my mother died when I was seven, and my father when I was nine—I went to town to live with an uncle and from that

time until I was thirteen years old I went to school. My education, so far as it applies to anything possible for me to have gotten out of an educational institution of any kind, was before I was thirteen years old.

Q. Then where did you go,—in what service did you go in the independent activities of life?

A. From the time I was thirteen until I was seventeen I learned a trade, and when I was seventeen I commenced to work for this Burlington road.

Q. In what capacity?

A. My first work for the Burlington road was trucking there in the Lincoln freight house; after that I was brakeman on a freight train between Plattsmouth and Lincoln; after that I was baggage-man; all that came within a year, and at 18 I was a conductor; from 18 to 21 I was a conductor here on the Burlington road. The Superintendent who was here at that time went to the Atchison, Topeka & Santa Fe at that time and took me with him. After that I came back here and ran a freight train for two or three months when I was made train master, and after something less than a year I was made Superintendent of this Burlington railroad,—division superintendent.

1292 Q. Now in all that period of time did you ever perform any work on books?

A. No,—never.

Q. Did you ever keep a set of books in your life?

A. No; that would be impossible for me.

Q. Could you go through the Certificate of Deposit account, or the Deposit Ledger of that bank personally and find head or tail of any account, or check it up—could you do it?

A. I could not.

Q. Could you at any time during your term of office as director?

A. Well, never at any time during my life could I have done a thing of that sort.

Q. Was that fact, to your knowledge, known to your fellow directors in that bank?

A. Well, I don't know that I could say that; I don't know what their knowledge of me was.

Q. You never made any pretense of ability to do that?

A. No sir.

Q. And you wouldn't have taken, if tendered, any office in the directory—could you have taken any committee office in the directory that would have required that sort of work to perform your duties?

A. It never occurred to me until this moment, but there was a time when that thing was suggested, that they put me on one of these committees, and I said "It is impossible, gentlemen, I couldn't do that sort of thing; I have no knowledge of that sort of work".

Q. You have had some business experience outside of your connection with this bank?

A. Yes; I have been very active all my life.

1293 Q. Been the directing head of a number of important concerns?

A. Yes, sir.

Q. And in your private, or in your other enterprises that you ran as the directing and executive head what has been your custom in regard to delegating the duties of accounting to others?

A. All business enterprises that I have been interested in I have always gotten somebody in the office who I thought was capable and honest, and of necessity have been compelled to let him, whoever he was, conduct the office.

Q. And did you trust these officers of the Capital National Bank any more fully than you did your own employes, or the employes of the concerns that you directed?

A. Well, I never have had a trust misplaced before, and I have had lots of experience with men in responsible places.

Q. Did you entrust these men any more fully than you have entrusted other men?

A. In exactly the same way.

Q. In what different particular did you perform the duties of director in this bank than you acted when you were running other and independent business?

A. No difference whatever.

Q. Now you can also state how your own time was employed actively during the period of time that you were a director
1294 of the Capital National Bank?

A. That only?

Q. Yes, during the period that you were a director, what other calls were there on your time?

A. Well, from the time I went in the Capital National Bank until 1890 I was superintendent of this Burlington road here, this north-western part of it,—1100 miles.

Q. What portion of it did you construct?

A. From Seward on northwest here nearly to Edgmont, South Dakota. After '90 when I left the road,—I left the road near the end of December and I was a month, about, in Mexico, and came back here at the end of January, and immediately after that I went to Europe, coming back several months afterwards, and on my return I took charge of the Lincoln Gas & Electric Light Company, and the Farmers' & Merchants' Insurance Company. That I had been an officer in since its organization, and I also at the same time owned a lot of hotels scattered around over the state and in South Dakota.

Q. About how many?

A. I think at that time I had nine. I had had as high as thirteen,—that is, a half interest in them.

Q. Any connection of any sort with any other bank?

A. Yes; I was president of the Aurora State Bank.

Q. President from its organization?

A. Yes, sir.

Q. And during all the time that you were a director in the Capital National Bank?

A. No sir. That bank wasn't organized until, I would think, 1888—about that time.

Q. But from that time until the suspension of the bank?

A. Yes, sir.

Q. Did your duties as superintendent of the railroad require any long continued absences from Lincoln?

1295 A. Well, very many of them,—both long and continued.

Q. Have any conditions of health required any long or continued absence?

A. Well, I had very bad health for a good many years, so bad that in 1885 I was advised to go to Carsbad in Bohemia, which I did, and in 1888 I had to go again, and in 1890 I had to go again; in 1890 was after I left the service of the road.

Q. Were they extended absences?

A. Several months each of them.

Q. In the work of the construction of the line to the northwest, were there any emergencies that required your continued absence for a long period of time?

A. Well there are always emergencies in the construction of a railroad; there may be storms, wash-outs or blockades; there may be material blockades; there are always many things coming up in the construction of a long line of railroad that are emergencies, and usually very serious ones.

Q. Were those facts known to your fellow directors?

A. Oh, yes, they all understood that.

Q. And the periods of your absence known to your fellow directors?

A. I never reported to them when I left town; nor when I came back.

Q. It was a matter of general publicity?

A. Yes, general publicity.

Q. Were any of the companies controlled by you depositors of the Capital National Bank at the date of its suspension?

A. Yes sir, they all were.

Q. There has been mention made here by the accountants of an account of R. C. Outcalt, Treasurer. Do you know personally what account that was?

A. Yes sir, I do.

1296 Q. What account was it?

A. Outcalt was treasurer of the Gas Company.

Q. Was that account in the Capital National Bank the Gas Company's account?

A. It was.

Q. Who controlled it,—who controlled that account with authority to make deposits and withdrawals from it?

A. Well, I controlled the account absolutely; the making of deposits in that way was because Outcalt was interested in that bank, and he was interested in the Gas Company, but he was an inactive treasurer; had no authority to check against the account and never did check against it.

Q. Did he ever, to your knowledge, make any withdrawals from that account?

A. No, he never did; never could have done it under any right he had there.

Q. Did you ever at any time authorize, direct or permit the deposit to that account of the Gas company of any funds that were not bona fide deposits for the amount for which the Gas company took credit?

A. No, I never did.

Q. Did the Gas company ever become the beneficiary of any entry in that account that was not a legitimate deposit entry?

A. No, it never did.

Q. You have, I guess, heard reference to an item of credit mentioned by the bookkeepers in this case, have you?

A. Yes, sir.

Q. Was that April 30th, 1891?

A. Yes sir, April 30th, 1891 I think—I believe that is the time.

Q. Was the Gas company at that time a beneficiary of any portion of withdrawal made on account of a certificate of deposit
1297 in Mosher's name and carried in Mosher's name?

A. No sir, it was not.

Q. Who handled the funds of the bank at that time under your direction,—who kept the account for the Gas company under your direction?

A. Mr. J. K. Honeywell, as secretary.

Q. Is he alive?

A. Yes, sir.

Q. So far as you know are the books and records of that company kept by Mr. Honeywell still in existence?

A. I think they are.

Q. In fact you know they are,—pertaining to that transaction?

A. Yes sir, I know they are.

Q. Would you have personal knowledge of the particular transaction, outside of reference to the books kept by Mr. Honeywell?

A. Well I would have personal knowledge of the transactions involving a great many deposits to the credit of the Gas company during that year, because it was during the time of our reconstruction there.

Q. Reconstruction of the electric and gas plant both, wasn't it?

A. Yes sir. We borrowed a great deal of money that year,—that is, I did for that purpose, about \$176,000.

Q. Did you borrow any of that money for that purpose from the Capital National Bank?

A. No sir, the Gas company was never a borrower from the Capital National Bank.

Q. Did the officers of the bank at that time procure some of your notes for that purpose?

A. Some of the notes I took care of myself, through going
1298 east and arranging for them; one of \$75,000, or two aggregating that with the Pennsylvania Mutual Life Insurance Company of Philadelphia, and a good many others were arranged for through negotiations of the bank, that is, Mosher as president of the bank probably.

Q. And in those cases at that time, the month of April, 1891, what was the course that the notes negotiated by Mosher or given to him for negotiation took?

A. Well the notes would be made by myself at the Gas office and the usual entries made there that are necessary to keep records of them, and taken to the bank to be sent for collection, and when the collection was received we were given credit for it,—the proceeds of the note and advised of the credit.

Q. In the usual course of business. Then when you got the advice of credit—

A. Then it was entered in the books there in the usual way. That was all by Mr. Honeywell, but that was the process.

Q. You have had some one go through the record to ascertain the course, so that you have refreshed your memory?

A. Of this one entry in question you mean?

Q. Yes, related transactions.

A. Yes,—I remember perfectly well because those notes of \$176,000 that were put out that year, they were Gas company notes, and I think they all bore my personal endorsement, because others were like the Penn. Mutual. When I went down there to try to negotiate money to commence my work there,—the outcome of it was that they would let me have the money if I would endorse the notes personally. I wouldn't say that all of them were endorsed by me after that, but I think they were; that \$75,000 did, and I presume they all bore my personal endorsement.

1299 Q. Now do you know what was the source of the credit of the \$10,000 entry to the credit of R. C. Outcalt, treasurer on May 1st, 1891?

A. Yes, sir.

Q. What was it?

A. It was a credit from the Cadiz, Ohio National Bank for a note that was sent there through the Capital National Bank.

Q. Was it a Gas company note that you refer to?

A. A Gas company note, yes sir, and it appears in the Gas company's records at this time.

Q. And you expect to be able to produce those?

A. Yes sir, I expect that Mr. Honeywell will produce the whole history of it.

Q. Did that company have a credit balance in the bank at the time it failed?

A. The Gas company?

Q. Yes sir.

A. It did.

Q. Placed there at your direction?

A. The account,—well, I might perhaps better say how the account was put there. Now, by my direction would mean this: Mosher was largely interested in the Gas company, and he was largely interested in the insurance company, and Mosher was the inactive treasurer of the Insurance company, and Outcalt was of the Gas company, because in our organizations it is necessary to have those two offices filled, but it was with the understanding that they

had no control of the accounts, but were appointed for matters of convenience to complete the organization, and Outcalt was the treasurer of the Gas company but the credits were controlled by me, because when I took charge of these companies that was the arrangement that I should have absolute control of it, and neither Mosher nor Outcalt had anything to do with the management of them while I was in charge of them.

1300 Q. Did they have anything to do with the deposit or withdrawal of funds?

A. That is part of my answer that they had nothing to do with the deposit or withdrawal of funds, but as a matter of right because of their interest, they were kept in their bank, but I could have taken them out at any time I wanted to do it without consulting them.

Q. Did the Farmers & Merchants Insurance Company have a balance there?

A. It did.

Q. What was the other bank with which you were connected?

A. The Aurora State Bank.

Q. Did it have a balance there?

A. It did.

Q. Can you give, as near as you can remember, the aggregate of funds which you controlled that were held in that bank at the time of its suspension?

A. Well there was actually in the bank at the time of its suspension something over \$22,000, but a few days before the bank suspended I had given some checks,—three I think,—to a savings bank there to get the interest,—because you could get good interest on deposits there,—and the bank failed just a few days after I had given these checks and taken my credit and my pass book for the amounts of them, and when I came back from Terre Haute, where I was when the bank failed, \$6,000 had not been withdrawn from the Capital National Bank; they had deposited the checks and taken credit, and because I felt that it was the right thing for me to do I paid that \$6,000 again. I says that the bank failed so soon after I had given the checks that I would pay it again. \$3,000 was paid to the Union Savings Bank, and \$3,000 to the Lincoln Savings Bank, I think it was.

Q. Was it the Industrial Savings Bank?

1301 A. I don't think it was Stull's bank,—so it made the aggregate loss to institutions that I had absolute dictation over as to where those funds should go, if I wanted to exercise it, of between twenty-eight and twenty-nine thousand dollars.

Q. What was your belief in the solvency and stability of that bank up to the very time of its suspension?

A. Well I had no question of the solvency of the bank. I don't suppose a man could have been more astonished over anything than I was to receive a telegram from Mr. Mullen that the bank had failed. I received it while in Terre Haute.

Q. Now what knowledge, at any time, did you have, if any, that

there were any false statements or false entries in any report to the Comptroller made by that bank, which bore your own attestation?

A. I had no knowledge that there were any false statements in any of them.

Q. How long had you been in Terre Haute before you got word of the failure of the bank?

A. I can't tell exactly as to that; I couldn't even tell the day I left Lincoln or the day I got back, but I think I got back Tuesday after the bank failed.

Q. Did you come home on account of the information you received?

A. Yes, sir.

Q. And then returned again on your visit to Terre Haute?

A. Yes, sir.

Q. What was the first intimation you obtained from any source, of any alleged wrong doings, or criminal misconduct of the affairs of that bank?

A. The first knowledge I had of any criminal conduct was after I got home from Terre Haute.

1302 Q. State the source of it, without any explanation.—who told you?

A. Well Mosher told me first.

Q. Did you talk to Griffith?

A. I met Griffith on the train, and he told me of the condition things were in there, but he didn't talk about criminal actions, and I think that wasn't the subject of any of our conversations.

Q. Now when was the first time that you learned of any criminal misconduct, and what was the source of your information?

A. Well the first time was the night of the day that I arrived home from Terre Haute. I got home,—I don't know just what hour, but I went to Mosher's house that evening, and I said to him "What does this mean, Mosher,—what have you been doing?" and he says "I have done everything a man can do." I says "Do you mean to tell me that what I hear about that bank is true?" He said "Yes". I said "What are you going to do about it?" and he said "I want to get to the penitentiary as quick as I can get there."

Q. Did you have any knowledge of his faithlessness before that?

A. Not a thing in the world. They hadn't even arrested Mosher up until that time. The bank closed on Saturday and didn't open on Monday. I don't think I could have possibly got back before Tuesday from Terre Haute, although I am not certain as to when I arrived. I came from there here immediately, and it is a matter of some 24 hours from there to Lincoln, and I didn't probably get back until Tuesday, and at that time Mosher was in his house at home; they didn't even arrest him then.

Q. Did you have any shares of stock in the bank at the time it failed?

1303 A. I had ten and no more. There was twenty that Mosher was trustee for, for my little girl that was there, but personally I had only ten.

Q. Did you suffer any liability on account of your ten shares of stock?

A. I paid my assessment on it.

Q. Of how much?

A. \$1,000.

Q. Now you had been then a heavier stockholder than you were at the last?

A. I at one time had \$25,000 face value of the stock.

Q. How long did you keep the bulk of that?

A. Well I had the bulk of it until 1891,—November 1891.

Q. Do you remember the date in November, 1891?

A. The 14th of November, 1891.

Q. From that time on did you have any other bank connection?

A. I was Vice President of the American Exchange Bank there in Lincoln from, I think, the first of January, I believe it was, after that.

Q. Did you make that connection after you sold the stock in Mosher's bank?

A. I think I did.

Q. Had you had any previous connection with the American Exchange Bank?

A. No, I think not; I don't remember just when I went in the American Exchange, but my memory without in any way referring to anything would be that it was the first of January.

Q. Now you may just give the reason for disposing of that stock,—you may state, who did you sell it to?

1304 A. I sold it to Mosher and Outcalt through negotiations with Mosher.

Q. At what rate?

A. At a premium of 25 per cent.

Q. How many shares did you sell?

A. \$18,000 face value; \$22,500 was what I was to receive for it.

Q. Now you may just state briefly the reasons and circumstances under which you sold that stock to Mosher.

A. The reason for selling the stock to Mosher was this: In coming from Chicago on the evening train,—leaving there in the evening and reached Lincoln the next day. I got on the sleeping car and went to my berth, and sitting in the section just ahead of me was a woman, and on the right side just opposite was Mosher. The woman I recognized was a woman of the town, in Lincoln, and there was nothing said between Mosher and myself all the way home; simply said "How do you do" but there was no more conversation between us, and I went to the porter,—he was a porter that I knew very well and a man that had been on the road a great many years—and I said, "Porter, who are these people here?" I wanted to see if he knew who they were, and he said "I don't know who they are, but" he said "they just had an awful time", and I said "What do you mean?" "Well," he said, "just an awful time between them" and I fancied that she had probably been drinking, from what he said. Anyway Mosher and she were together, and they were going back home. When we got in Lincoln that morning, after we got in there

I telephoned to Mosher that I wanted to see him, and he came over and I said "Mosher, I am going to sell my stock in your bank, and if you want it you can have it, and if not somebody is going to get it." And he said "Why?" I said "There is no use for us to talk about why, you understand perfectly why". I said, "I talked to the porter about your trip to Chicago, and that's all I have got to
1305 say about it, but my stock is for sale". And he said he would buy it and asked me what I wanted for it, and I said "Whatever is right", and he said "Is 1-25 all right?" And he said "Will you take Outcalt's and my notes?" and I said "Yes". "Well" he said "how about security?" I said "You neednt give security unless you want to you can have the stock and give me your notes" and he said he would give gas stock security, and that was the transaction, and it was done as quickly as we are talking about it here now, because I didn't spend any time abusing him: I told him what it was for and he knew what it was for. I wanted him to take all of it, but he said he would take all but \$1,000, and I let it go that way and things went on except after that I didn't have very much to do with him. No reason except just a personal reason that was all.

Q. Now had you ever had any grievances against Mosher, or difficulty with him?

A. No, I never had.

Q. Except the instance of his social degradation, in that respect.

A. No there never was a word between us about anything else, so far as I know of, but I had heard of this sort of thing before and that was the culmination of it, and that is the way I finished it.

Q. Did you have any suspicions by that that there was anything wrong in the bank?

A. No, not at all; it was simply that I was mad and disgusted, and took that way of expressing my opinion, and letting him own the most of the stock that I owned that was all. There had never been anything that came to my notice in town there, except someone came to me and spoke to me and they said this was a woman that he had had out to the "pen"; somebody had said that to me, but that
1303 didn't call forth my indignation, but there never was any question as to Mosher's business integrity at all.

Q. And the severance of your connection had no connection with the bank's rating?

A. No sir.

Q. Except that such conduct of that kind might effect it at some-time?

A. Well of course a man ought not to do much of that sort of thing, if he expects to do business.

Q. Even after that you let your \$1,000 remain in there, and let them use your name?

A. Yes, sir, I did.

Q. And kept your money there?

A. Yes sir. I say I kept my money there; I had some there, but I had more in the German Exchange Bank after that.

Q. Where did you keep your personal account after that?

A. I kept some in both places, but my account was chiefly in the

American Exchange Bank, because that is where I belonged. I didn't belong to the other place as a matter of fact, except in a smaller way, and the American Exchange was quite a different thing.

Q. Were any of the entries upon the books of that bank ever made under your personal direction?

A. No sir, not one.

Q. Up until the time of the suspension of the bank, did you ever have any knowledge that any false entries were made anywhere in the records or books of accounts there?

A. No information from any source; not even from the bank examiners who I always talked to.

Q. Nor from any teller in the bank, or clerk?

A. No sir.

Q. Nor from any officer or director?

A. No sir.

Q. Nor from any personal observations of your own?

A. No sir, from no source whatever.

1307 Q. Did you have any personal knowledge or information at any time of the extent of the loans made by that bank to the Western Manufacturing Company?

A. I don't think I had any knowledge of them at all; the whole question of the loans and the conduct of that bank was in the hands of others.

Q. Well was that specific question ever called to your attention at all?

A. There in the bank you mean?

Q. Yes, before the bank failed,—did you know that those notes were going through the bank?

A. No.

Q. Did you have any knowledge that the notes of Mosher and Outcalt were in the bank in any considerable sum, or in any sum?

A. No, I had no knowledge of any of those things; they never came to my attention in any way, through any of the meetings of the bank; there never was any report from the executive committee either that criticised any of the conditions in the bank,—that is at none of the meetings at which I was present.

Q. Did you ever authorize the bank's taking paper of Mosher to the extent of \$85,000?

A. No sir, I didn't even know of it.

Q. Or of Outcalt to the extent of \$75,000?

A. No, sir; I didn't even know of it.

Q. Or in any sum whatever?

A. No,—never.

Q. Did you ever concur in their borrowing from the bank?

A. No sir.

Q. Were you ever given an opportunity,—was the question ever presented to you?

A. No sir,—never in any shape whatever.

1308 Q. Did you have any knowledge of the deposit account of Mosher and Outcalt?

A. I had no knowledge of it whatever.

Q. At any time during the——

A. I had no knowledge of anything back of the room there where the directors and the executive committee met and what came up there for discussion was the only knowledge I had of the condition of the bank.

Q. Did that knowledge include any reference to the individual deposit account of C. W. Mosher?

A. No sir, it did not.

Q. Or of R. C. Outcalt?

A. No sir, never was a subject of discussion there.

Q. Or state treasurer Hill?

A. Never was the subject of discussion.

Q. Was the subject of certificates of deposit, or the certificate of deposit account ever challenged to your attention?

A. No sir.

Q. Did you know anything at all about any false entries in that particular account?

A. No sir.

Q. Or of the certificates of deposit overrunning the books?

A. No sir.

Q. The Griffith that you referred to as Bank Examiner, where did he live?

A. I think he lived in Wahoo; it seems to me he did; in the state somewhere.

Q. What was the other examiner you referred to?

A. Hayden.

Q. Where did he live?

A. He lived in Lincoln there; both men I knew very well.
1309 and knowing them as I did I always took occasion to ask them about the bank up there; it was a privilege that I exercised because of my acquaintance with them, and because I was glad to have their information as to what the situation was there.

Q. There is a copy of a letter purporting to have been signed by you, with other directors of the Capital National Bank, and directed to the Comptroller of the Currency, under date of February 19, 1892 in this record, in which the subject is mentioned of an excessive loan to E. W. Mosher. Was the E. W. Mosher loan transaction a matter that ever was called to your attention?

A. Yes sir,—now, wait—I don't know that that was called to my attention; it was a question of discussion at a directors' meeting there sometime, but I don't know that I was present; I think not however, but I remember what was said about it and done about it very well.

Q. You do remember that?

A. Yes, sir.

Q. Was that at the bank?

A. The meeting?

Q. No, your reference to it; who was your talk with; did you talk with C. W. Mosher about it, or any officers or directors of the bank?

A. My recollection would be that I talked with someone, or some of the executive committee, that is, that they had said something to

me about it, but that is not very definite in my mind of how that was done. I think there was action taken by the directory instructing Mosher what had to be done about it.

Q. Do you know the character of the dealings between E. W. Mosher and the bank?

1310 A. Yes sir, I knew that in a way; that it came to me, but it is a little bit foggy in my mind just now.

Q. (Last question repeated.)

A. I can't tell just now how the question of the dealings with E. W. Mosher and the bank came to my attention. I don't remember, without I was at a meeting where the matter was discussed,—I wouldn't say that I wasn't, but in some way it seems to me it was from Professor Stuart, although I am not sure. But this is the fact as it applied at that time: now, E. W. Mosher and a partner of his—his name I think was Stark—were doing business up in York county, and it appeared that the bank had been sending them money, or sending E. W. Mosher, or probably the firm of Stark and Mosher, if that was it, money to loan up there for the bank, and when it came to the attention of the directors they protested against what was being done and the outcome of it was that Mosher was told that if money was to be sent there, that it could only be sent conditionally; that he was to endorse the notes of E. W. Mosher that would be sent for money that was sent to York county, and they should be endorsed by E. W. Mosher, and those were to stand as the paper covering the amounts remitted to Mosher and Stark, and held with the paper covering the loans that they made to the people in York county, which were also to be sent to the bank and held as collateral to those E. W. Mosher, or Stark & Mosher notes, I am not sure which it was—they were endorsed by E. W. Mosher—until they were paid, and as there was enough money collected on these securities that the money was actually loaned on here in York county—or that district—and remitted to the bank to take up these notes that were given by E. W. Mosher, or Stark & Mosher—whichever way they may have been—then the note should be canceled and the transaction was ended.

1311 Q. What was the purpose of sending—

A. The reason was as given at the time that the rate of interest was more up there and the security was just as good there as any other place, in fact, there was no place where it was better, so the directors consented to the money being used in that manner under the conditions that they fixed, which was the E. W. Mosher note to be endorsed by C. W. Mosher and secured by the paper that was taken for money that was actually loaned up here in York county and vicinity.

Q. Now were you acquainted with the territory in and about York county?

A. Oh I know York county, and every other county in the eastern part of the state as well as I know my name.

Q. Did you regard that as a good locality to make loans of the bank's surplus funds?

A. Yes sir; I don't think a better one could be found anywhere.

Q. And was that your opinion at that time?

A. It was.

Q. In any assent that you gave to that transaction did you act in good faith and for the interests of the bank?

A. Well any part that I took in it was in good faith.

Q. Were those loans really regarded as primary obligations of E. W. Mosher at any time?

A. No, they were not the obligation of E. W. Mosher, except just as I have related.

Q. But he in a sense was the agent of the bank to make those loans?

A. That is the idea.

Q. And the bank should hold the primary paper, paper of the real borrowers?

A. Yes sir, the bank should hold that until the E. W. Mosher notes were paid off, and when they were paid off the collateral would be released. The idea was about this. I think they let him have a few thousand dollars at a time, say five thousand for illustration, and he would send his note for five thousand dollars, and that was endorsed by C. W. Mosher, after the action of the directors, and the collateral covering the money that was loaned—the money that was sent out there—was sent to secure the note. So the E. W. Mosher note, endorsed by C. W. Mosher would be secured by that collateral; so it would be only E. W. Mosher's note, with the endorsement and the collateral under the arrangements that were made for handling that money.

Q. Did you know of the Small transaction—what was known as the Small transaction?

A. Yes sir, I knew of it. Well that was a matter that was discussed there, and the story of it is this: Small was a banker in the little town of Fairfield, in this state, and he became the debtor of the bank, and he finally got into trouble—failed, I believe, and he turned over to the bank a lot of lands and some horses that he had to secure the bank for money that had been loaned him.

Q. What was your knowledge or information as to whether the bank ever had any loss on that transaction?

A. Well it was said at some of the meetings there—one or more, I don't remember as to that—that there wouldn't be any loss on that; that there was ample security, to cover all that Small had.

Q. Was that your information in respect to that?

A. That was my information of it. I don't think there ever was much loss there, although I don't know what the final outcome of it was I am sure. There was some difficulty out of the land security; I believe deeds had been given to the bank; the bank had paid mortgages and finally I think it was held that the deeds were only security; couldn't be considered straight deeds, and some process was gone through with in order that the equity, if there was any, should go to Small's other creditors. I think he had plenty of them.

Q. Did you have any knowledge of how the relief fund appro-

printed by the state for the relief of the drouth sufferers in 1891 was handled by the treasurer through the Capital National Bank?

A. No, I had no knowledge or information on the subject at all. I might say——

Q. Did you at any time during the——

A. (continued). —that I was a signer on one of the bonds of Mosher, and had a lot of trouble about it after the failure of the bank, and it was finally decided that the bond that I was security on was not the one that the loss occurred on; there was a loss I believe in the bank of \$3,500, or something like that.

Q. You had no knowledge of the details of the handling of this relief fund?

A. No, I didn't know anything about them at all.

Q. When did you first acquire your knowledge of the alleged extent of Mosher and Outcalt's defalcations in this bank?

A. Why since I have been here.

Q. At this trial?

A. I never knew but a mighty small part of what I know now; I wasn't here at the other trial until I came here to testify and then went away. I have never known fully what the outcome of it was in the way of losses; I don't know that I know yet.

Q. You were not here during the trial, so you didn't know the details of these exposures?

A. No sir, I didn't.

1314 Q. When was the first time that you had any knowledge that either of those officers were alleged to have employed forged paper to put through the bank?

A. I never knew that until here; nobody ever told me that; at least, if I ever heard it I have no recollection of it; I think the first time I ever heard of forged paper was here; I may be in error as to that, but that is my recollection of it.

Q. Did you ever — such an intimation as that during the life of the bank?

A. No sir.

Q. Can you fix any more definitely the date that you left Lincoln in 1890 for Mexico?

A. I have the information here that I got by telephone from Lincoln; I couldn't do it from memory.

Q. Can you tell about what date it was?

A. From my memory?

Q. Yes sir.

A. Well I could tell by taking it from this; I would have said along about the 20th of January, but as a matter of fact it was the 14th of December.

Q. The 14th of December, 1900?

A. 1900? No, 1889.

Q. When did you get back from there?

A. I got back from there on January 6th.

Q. 1900?

A. 1901; no, 1900. I went to Mexico December 14th, 1889, and I got back from there on January 6th, 1890. December '89 I went

there, there is no question about that in my mind without any sort of reference, because I left the Burlington road in December 1889.

My salary however did not terminate until the end of January 1890, but when I left the road I took a car that they loaned me and took a lot of my friends and went with Governor Thayer and his party, and went to Mexico. On this trip we left Lincoln on the 14th of December.

Q. What time did you go to Europe in that year?

A. I left for Europe on the 2nd day of February, 1890.

Q. What time did you return from Europe?

A. I returned from Europe on the 9th of August.

Q. Were you present at any meeting during that year,—during June or July of that year of the directors of the Capital National Bank, or were you absent continuously?

A. I was absent continuously; I was in Europe; I was in Cape Norway on the 31st day of May, and I was not here from the 2nd day of February when I went away until I came back in August.

Q. Now there seems to be during that period of time some transactions shown in which your notes passed in or out of the bank. What arrangements did you have with any one to attend to your business? Who was your secretary or man of confidence at that time?

A. Mr. Mullen was, as now.

Q. And all those transactions you wouldn't have personal knowledge of?

A. I couldn't have, being away.

Q. If any were paid during that time who paid them?

A. Well, Mr. Mullen, all these years, in all 25 years has been nearer myself than I have myself; he has had perfect absolute charge of all my private affairs, whether I have been away or whether I have been here all the time. Mr. Mullen has carried for many years from me an absolute power of attorney to do whatever he pleases, no matter what it is; he has never pleased to do anything wrong yet, but he may do like Mosher; he may fail me, but I am not worrying over that any.

1316 Q. Mention has been made during the trial of an alleged scheme or plan in 1890, I think it was, to increase the capital stock of the Capital National Bank to one million dollars. Did you ever know anything about such an enterprise?

A. Yes sir, I knew about it.

Q. Did you ever sign any prospectus or letter for circulation on that subject, or authorize any to go out over your name?

A. I never did.

Q. So far as you know was any circular, prospectus or letter on that subject gotten out over your name?

A. Not with my knowledge, no sir.

Q. Did you ever see a letter or prospectus on that subject over your name, executed by yourself, or by any other person?

A. No sir,—never; there never was anything of that sort.

Q. Did you have a prospectus prepared by anyone?

A. No, I never did.

Q. Did you know of anyone else having one prepared?

A. I think Mosher had.

Q. You saw that did you?

A. Yes sir, I saw it.

Q. Over whose name was that prospectus?

A. Over Mosher's.

Q. Did you ever know that that was circulated by him out over the country banks?

A. I wouldn't know anything of it; I would be able to presume what he had it done for, but I never knew of his doing it.

Q. Did you know that he had actually distributed them?

A. I didn't know of it, but I presume he did.

Q. Were you ever present at any meeting of the stockholders when the subject matter of that enterprise was up for discussion?

1317 A. I was.

Q. Did you have more than one meeting?

A. I think not.

Q. Do you remember any person that was there at that meeting?

A. Well there were—there were quite a lot of people because it was a meeting of the stockholders and not of the directors, it was just a meeting to discuss the scheme that Mosher had figured out.

Q. He was laying it before the stockholders?

A. Putting it before the stockholders, yes sir.

Q. Did you personally favor that enterprise?

A. No sir, I was opposed to it.

Q. Do you know now whether he ever obtained the assent of a majority of the stockholders to the enterprise?

A. I don't think he ever did.

Q. Do you know of any formal record ever being made at any meeting either of the stockholders or of the directors in which authority to carry out Mosher's enterprise in that respect was given or conferred?

A. I don't know of any such authority ever having been given.

Q. Were you ever present when any such authority was given?

A. No sir.

Q. Either by the stockholders, or the board of directors?

A. No sir.

Q. What had been your knowledge as to whether this prospectus prepared and submitted by Mosher had been suppressed or circulated; did you have any knowledge on that subject?

A. No I didn't have any knowledge on that subject at all; I remember of seeing those circulars.

1318 Q. Under whose authority were those,—was that circular or prospectus printed?

A. Mosher's.

Q. Did you have any part in authorizing the printing of any such circular or prospectus?

A. No sir. I opposed his scheme. I think his idea was to work it up and have it come later; that is what he finally did; I am not certain about it, they might have met at some other time, but the

time I was there I didn't agree to it and said so openly and what they did after that I don't know anything about it.

Q. You never participated in any proceeding authorizing it?

A. No sir.

Q. Did you ever solicit any subscriptions from Mr. Jones, Mr. Jurgosen or Fritz Beckerd?

A. No sir.

Q. Or any other person?

A. No, sir, never.

Q. Did you ever ask any man to make any subscription to that enterprise?

A. No, I never did; I never did because I didn't approve of it, and I simply had nothing to do with it.

Q. Were you ever present at a meeting or conversation between Harry T. Jones and C. W. Mosher and others in September 1890 at which the subject matter of the prospectus referred to or the subscriptions for stock pursuant to such a plan was ever discussed, when Mr. Jones was present and in the presence of Mr. Jurgenson?

A. No, I was not.

Q. Did you ever participate in such a conversation with Harry T. Jones, or at which Harry T. Jones was present?

A. I never did.

1319 Q. If that talk took place you were not there as one of the parties?

A. I was not.

Q. Are any of the persons who were at the meeting at which you opposed that enterprise living so far as you know today?

A. I presume that most of the men who were interested there in the bank were present. I think R. E. Moore was there, and he was a prominent figure; I think it was Mosher's scheme to have him become an active officer.

Q. But a number of the persons are now dead?

A. They're nearly all dead; there are a few of them living that were then stockholders in that bank.

Q. Do you remember particularly about R. E. Moore being there?

A. Yes sir, I think Moore was there.

Q. At that time so far as your knowledge and opinion of the bank went, what was your opinion of the condition of the bank?

A. My opinion was that the bank was perfectly right as it was; there wasn't any good reasons for doing that, and some reasons for not doing it.

Q. Were you ever present at any interview in the Capital National Bank at which Harry T. Jones was present, or Mr. Jurgensen, in which an appeal was made to Mr. Jones for increasing the capital stock on the ground that the business was increasing so rapidly and that customers were increasing so that to do the business they thought they ought to do it was necessary that they increase the amount of the capital stock?

A. I never was, and I would remember a meeting of that kind if it occurred.

Q. Were you ever present at a meeting at which Harry T. Jones was present in the office of the Capital National Bank in September, 1890, or at any other time in which the plea was made to Mr. Jones to increase the stock on the ground that some of the customers of the bank, such as shippers and grain men at certain seasons of the year needed more money than the law would allow them to loan under the present capital stock and which they considered good loans?

A. I never was present at any such a meeting; there never was such a meeting that I was present at.

Q. Were you ever present at a meeting in the Capital National Bank in the month of September, 1890, or at any other time, at which one of the parties to the conversation remarked in Mr. Jones' presence and hearing that the Capital National Bank was the best bank in the state of Nebraska, and that they were going to make it the first million dollar bank in the state?

A. I was not; never heard any such remark from anybody.

Q. Were you ever present with Harry T. Jones at the office of the Capital National Bank in Lincoln, in the month of September, 1890, at which there was exhibited to Harry T. Jones a lot of the statements,—probably every statement that the bank ever made, for the purpose of showing how the business of the bank had increased?

A. I was not.

Q. Were you ever present at the Capital National Bank at any conversation between Harry T. Jones and Mosher and Outcalt and some other officers or directors at which Harry T. Jones was exhibited a sheet showing what amount of dividends had been paid, and that the bank had never paid less than 12% dividends?

A. I never was.

Q. Mr. Thompson, how long have you been acquainted with Harry T. Jones, so as to be able to personally recognize him and know who he is when you see him?

1321 A. The first time I ever met him to know him,—to know who he was was since the trial here 9 years ago this coming summer, I think. I don't think it is over,—I can't tell just how many years, but it was some little time after that I met him to know who he was. I may have met Harry T. Jones, like someone said here yesterday,—like Mr. Jones said he came to my office and asked to have something done about a cattle car, but that didn't fix my attention on Harry Jones. I never had any sort of conversation, nor any sort of relationship in any way, shape or manner.

Q. Unless it was such incidental relationship as has been testified to.

A. That might have been, but I wouldn't have known him if I had seen him, even after I met him. It was a year or so after that I saw him again, and then I only met him and I didn't know him and Mr. Mullen said "Do you know who that is?" and after I got my eyes on him and got my memory working a little I said "Yes, that's H. T. Jones".

Q. When was that?

A. About three years ago.

Q. Is your faculty of recognition ordinarily pretty sharp?

A. I think it is the average; about as good as the average man.

Q. Of course you know him well now?

A. He afterwards came down to Mexico with Bignell and I showed him over one of our mining camps and had him out with me for a couple of days and got to know him reasonably well, but that was my first acquaintance with him, any more than just to speak to him as I told you.

Q. At the last trial did you get to see any of the original documents that came from the office of the Comptroller, to be able to verify your signature on them?

A. No, I did not.

1322 Q. How long were you here during that trial?

A. I think only a day,—about that.

Q. Were you called up when you knew that your testimony could be taken?

A. Yes sir, I came when I was asked to come.

Q. But you didn't stay to attend the trial that time, as you have this time?

A. No sir.

Q. Was Mr. Lynch, the Comptroller's agent here when you came, so far as you learned?

A. He was not.

Q. Did you have access to what purports to be your official oaths?

A. No, I did not.

Q. Or the official statements from the Comptroller's?

A. No, I did not.

Q. Or the letters from the Comptroller's office?

A. No, nothing.

Q. Were you able to see any of those to verify whether they then bore your genuine signature or not?

A. No sir, I didn't see any of them; I was unable to see any of them because they were not here.

Q. Do you have any personal memory of having signed any director's letter to the Comptroller of the Currency, copies of which purport to be exhibited here?

A. No, I have no recollection of doing it; I wouldn't say that I did not do it, but I wouldn't say that I did.

Q. You have had no opportunity to verify them?

A. No sir.

Q. As a matter of fact, eight years ago did you ask us to show you the originals?

A. Yes sir, I did; I asked to see a lot of the originals that I didn't see.

1323 Q. You know what the explanation was why you didn't get to see them, that Mr. Lynch had gone, and they had agreed to substitute copies.

A. Yes, sir.

Q. Did you see Harry T. Jones at that trial?

A. No sir.

Q. Was he in the court room the day you were here?

A. No sir, he wasn't.

Q. Now in respect to your relations and faith in Mosher. You may state what if any obligations he personally was owing you at the time of the bank failure?

A. Mosher and Outcalt owed me this note taken for the stock that I sold him for \$22,500. That was all they owed me aside from the little trust that Mosher held for my little girl.

Q. What about some funds that you advanced to a man named Ferguson at Minden?

A. I beg your pardon. I had let a man.—J. W. Ferguson I think his name was, out at Minden have quite a lot of money, ten or twelve thousand dollars—something like that—on Mosher's suggestion and recommendation, because he was a man that was doing some business for Mosher up there, or had been, and that was paid down to twenty five hundred dollars or something like that and Ferguson broke up and quit business and refused to pay, and Mosher guaranteed the payment of that.

Q. And that obligation was outstanding?

A. Yes, sir.

Q. And what was the trust fund in Mosher's care for your little girl?

A. Twenty shares of stock of the bank that I had put in trust with Mosher that the interest and dividends should go to her until she was eighteen years old; that is what it was.

Q. Now did you know Walter T. Scott?

A. I knew him when I saw him as I did here, if this is Walter T.

Q. Yes, sir. At one time employed as bookkeeper in the bank.

A. I didn't know his initials; I knew him as Scott.

Q. Have you ever had any personal intercourse with him, or conversations of any sort?

A. None whatever.

Q. You were present here when Mr. Scott testified?

A. I was.

Q. What is the fact as to your being at the bank there frequently?

A. I was rarely ever in there; I had plenty to do elsewhere.

Mr. NORVAL: Move to strike out the last part of the answer as not responsive.

Mr. ROSE: All right, let it go out.

Q. What is the fact as to your spending time there at intervals in September, 1890 or in the same month, September of 1891?

A. I always went there when I had any occasion for going, but I never made it a place of resting or loafing, or anything of that sort.

Q. In September 1891 did you have a business office of your own?

A. I did.

Q. Where?

A. It was in the Burr block, a block away from the Capital National Bank.

Q. And that was the offices of what institution?

A. The Lincoln Gas and Electric Light Company, and the Farmers & Merchants Insurance Company.

1325 Q. Did you in the forepart of September, 1891, or at any time in that month, attend a meeting of the stockholders

or directors after banking hours in the little room leading to the customers' safety deposit boxes?

A. Well I never attended a meeting at any time in that room.

Q. Was there any meeting of any sort held at such time and under such circumstances, at which you were present in the month of September, referred to by Mr. Scott, in 1891 in the room specified?

A. No, I never attended a meeting at any time in that room, it would be practically impossible to hold a meeting in that room.

Q. Do you remember the width of that banking room, the Capital National Bank?

A. Well this would be only my judgment, but I think the whole room was about 25 feet,—probably about 22 feet—25 feet less the walls.

Q. Twenty two and a half less the walls or twenty five?

A. Wasn't the lots twenty five feet wide?

Q. I guess the room is obliterated now.

A. Rudge & Guenzel is there now; it is a big establishment now.

Q. You may describe the plan of that room, and show how that room was located, and all the rooms in the bank.

A. Well it is just a little back room here; that will show exactly what the arrangement was, and show what that room was. That little room that was spoken of by Mr. Scott yesterday was the little room there.

Q. Was this diagram made up at your direction by Mr. Mullen?

A. Yes, sir, he made it from a rough sketch I made him.

Exhibit "Ar" identified.

1326 Q. You may state whether Exhibit "ar" is a fairly correct and accurate representation of the banking room of the Capital National Bank as it existed in September, 1891?

A. It is, except getting the entrance on the corner; it is a little different from what it was; it went up this way, the entrance did (witness changes diagram). The entrance on the corner was a diagonal entrance. That is about the situation.

Q. Was it on a street corner?

A. Yes, sir.

Q. What streets did it front on?

A. Corner of Eleventh and "O" streets,—on the southwest corner.

Q. And from what street was the side door?

A. From Eleventh street.

Q. And where was the lobby in the bank, where the public transacted business with the bank?

A. The lobby ran along lengthwise of the building, and the lengthways is along Eleventh street.

Q. Where was the work room?

A. The work room was the room between the front office,—that was Mosher's office and the directors' room, and anything they had use for a room for.

Q. And th lobby was in front?

A. The loi by was on the side.

Q. On the street front?

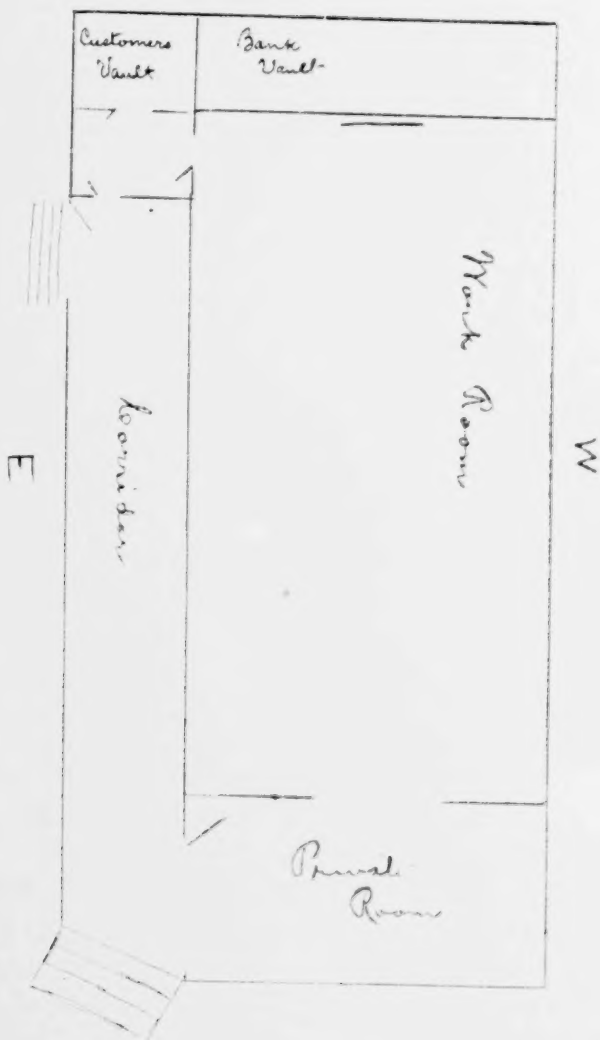
A. On the Eleventh street front, and the office of the president and

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no

EXHIBIT

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N



the office in which the meetings were held faced on "O" street,—was on the front side of the building. The work room was back of that between that and the bank vault,—that is the vault for the use of the bank, and the customers' vault that is for storage of papers, and so forth, was a continuation of the corridor. And it was
1328 in that room that Scott said this meeting was when he came in the bank.

Q. That is the room that is the entrance to the customers' deposit boxes?

A. That is the room.

Q. How large a room was that?

A. It was a very small room; nothing in it except one small chair and a little table.

Q. And it was entered, not from the work room of the bank, but from the outside where the customers came in?

A. The entrance was from the lobby.

Q. How many men could comfortably hold a meeting in there?

A. Well you couldn't hold a meeting in there if you had more than two or three people, unless they were standing up.

Q. Did you ever attend a meeting in there?

A. No sir.

Q. Did you ever know of a meeting being held there?

A. No sir, never did.

Q. Did you have a place where you regularly held the meetings?

A. All the meetings I ever attended there was in this front office.

Q. On the "O" street front?

A. Yes sir, on the "O" street front.

Q. Was that the president's office, or Mosher's office also?

A. Yes, sir.

Mr. ROSE: We offer the plat in evidence.

Plat received in evidence, being Exhibit "ar."

A. —the back room, or work room as it is called had a lot of cages in it where men worked inside of those, it was wire netting.

(Here follows diagram marked p. 1327.)

1329 Q. Was there any counter, or partitioned structure between the work rooms of the bank and the corridor or lobby?

A. Oh, yes, it was a regular counter; bank counter, the usual bank counter.

Q. You may state whether at any meeting at which Mosher and Outcalt, and A. P. S. Stuart, H. J. Walsh, and several others were present in the month of September, 1891, held in the little room at the entrance to the customers' safety deposit boxes in the Capital National Bank, after banking hours, you said that the whole thing was rotten right through, and you were going to get out of it?

A. Well I wasn't at any such meeting, so I couldn't have said any such thing.

Q. Well did you say any such a thing?

A. No. At that time if there had been any occasion for saying anything,—

Q. There has been a schedule of the notes purporting to have been signed by you, produced here. What is the fact as to whether all the notes that you gave to the bank during its existence were paid by you at or about the time they matured?

A. I never had a note to the bank that wasn't promptly paid.

Q. Did you have any large indebtedness to the bank?

A. Not what I would call large; I don't know what might be considered large; I think I never had a note there for more than a very few thousand dollars; I think I had one of ten thousand dollars.

Q. At the time you had that did that represent the aggregate of your whole indebtedness to the bank at that time?

A. It did, yes sir.

1330 Q. And that note and the others was paid?

A. Always paid.

Q. There was a note, or a record of a note shown of \$1,640, or approximately that purporting to have been signed by yourself and C. W. Mosher, and also I think one not purporting to have been signed by you in your capacity as president of some electric supply company. Do you recall those transactions?

A. Were they separate notes?

Q. Yes one by you and Mosher and one signed by you as president of some electrical supply company.

A. Yes, I remember that. At the time I had charge of the Gas company there was a lot of electrical wiring to do and a lot of supplies to furnish, and so forth, and there was a little company arranged,—called a company, but in fact nothing but a partnership—for that purpose, and this little money was used for that purpose.

Q. Was it paid?

A. Yes, sir.

Q. What became of the company?

A. The company was dissolved; it wasn't a company, it was simply a partnership.

Q. Did it liquidate?

A. Yes sir.

Q. How long was it in existence?

A. I couldn't say how long; not very long. Our idea in the first

place was, or in arranging a partnership, as you might call it for doing this electrical wiring, was that there was no one else there to do it, and the Gas company needed something of that sort, and I arranged a little concern to do that work, and later others commenced doing it and then I quit.

Q. Kind of a little auxiliary to your main enterprise?

A. Yes sir, that is all it was.

1331 Q. And when other-occupied the field, you went out?

A. That's all there was to it.

Q. Did it leave any unpaid obligations?

A. No sir; it never had any only these small obligations and they were paid.

Q. What knowledge did you have of any excessive loans being made to director W. W. Holmes?

A. I never knew anything of it; the testimony I heard here was the first intimation I ever had of it.

Q. Now I neglected to ask you specifically about your knowledge of the Collection Account of March Brothers Mosher and Company. What knowledge did you ever have during the existence of the bank touching that particular account?

A. I never had any at all.

Q. What if any knowledge did you have during the existence of the bank of Bills of Exchange being credited counterbalancing the entries made of alleged notes of F. S. Johnson & Company, the First National Bank of Hastings, and the First National — of Kearney?

A. Nothing at all.

Q. What knowledge, if any, did you have during the existence of the bank of any credits to the Interest Paid account, or of credits to the Interest Paid account not deducted from the earnings of the bank, said to aggregate, during the existence of the bank, \$90,-916.44?

A. No knowledge whatever.

Q. What, if any, knowledge did you have during the existence of the bank that the Deposit Ledger accounts, were at any time footed at a sum of \$100,000, or any sum, less than the actual footing of those accounts?

A. No knowledge whatever.

1332 Q. What if any knowledge did you have during the existence of the bank that the footings on the Deposit Ledger were carried into the General Balance book of the bank at a sum \$100,000 smaller than the aggregate footings as shown?

A. I knew nothing whatever of it.

Q. What, if any, knowledge did you have during the existence of the bank of any Certificate of Deposit account showing an overdraft?

A. I had no knowledge of anything of that sort.

Q. What, if any, knowledge did you ever have that the certificates of deposit outstanding exceeded the deposit credited to the certificate of deposit account in the bank?

A. I had no knowledge whatever.

Q. What knowledge did you have that at the time of the failure,

as to whether the outstanding certificates of deposit overran the sum credited to that deposit account in a sum exceeding \$431,000?

A. I had no knowledge whatever of it.

Q. In a general way what was the extent of the deposits made by you, in your personal and individual deposit account in that bank while you were an officer?

A. In a general way how were they made?

Q. Well what would they run to; did they amount to any considerable sum?

A. In the aggregate?

Q. Yes, sir.

A. Oh, they amounted to a great deal; a great deal; I couldn't say how much, but I always, with a comparatively few exceptions, had good deposits there; I think the records if they are right will show that my account there was nearly always *had* a good deal to my credit, and when I borrowed anything, it was for a short time,—usually for a few days—and never for more than a very few months.

1333 Q. Did your balances fluctuate in the course of your business in accordance with your demand for money?

A. Changing all the time.

Q. Did that continue practically all the time up to the close of the bank?

A. Yes, sir, I had an account there up to the close of the bank, but as I said before, I had two accounts at that time; one with the American Exchange, and one with the Capital National.

Q. Now in connection with this examination we want to offer the record of the daily balances of Mr. Thompson covered by the deposit ledgers, so far as they have been produced, for the periods of time covered by the books exhibited here, and I would like to substitute a schedule of that that can be verified.

The COURT: I see no reason why a schedule cannot be prepared.

Mr. NORVAL: Of course the offer will not be received until we have time to examine it.

The COURT: Oh no, the schedule will not be received at this time.

Mr. ROSE: I just make the offer at this time so it will not be forgotten.

Q. What personal knowledge did you have of the bank's sending out to its country bank depositors printed slips embodying the presumed totals of the reports of the bank to the Comptroller of the Currency?

A. Well that is a matter that I never gave any thought to; never knew anything about what their custom was, what they did in the bank about that sort of thing; no knowledge whatever.

Q. It wasn't a matter that you personally participated in?

A. No sir, knew nothing of it.

1334 Q. What if any knowledge did you have of the publication, or translation and publication of any of the reports of

the bank's condition in the German language? In any German newspaper?

A. I had no knowledge of it.

Q. When did you first hear such a matter suggested?

A. On the witness stand here yesterday.

Q. Did you have any personal participation in that?

A. No sir.

Q. At the periods of time when you were absent from Lincoln what opportunity did you have,—or what part did you have in the making of any reports of this bank to the Comptroller of the Currency, or in the publication of any statements?

A. When I was absent from Lincoln?

Q. Yes, sir.

A. No part whatever.

Q. Did you have any knowledge whatever, of the proceedings when, I think you said,—you were in Europe?

A. No sir, at no time when I was absent did I know anything of their proceedings.

Q. State what, if any, part you had in the making or publication of the report, other than to merely attest it, at any time?

A. I had no part whatever in it.

Q. Did you have any part in the reports which were not attested by you?

A. No sir.

Q. Did those ever come to your attention, or were they ever checked over by you?

A. No sir.

Q. Would you be able to check over a report?

A. No sir, I would not.

1335 Q. Would it have been possible for you to have done otherwise than to credit the information such as you could obtain from anywhere other than the officers?

A. There would be no way that I could take a report and check it from any records, if that is what you mean?

Q. Yes, sir.

A. I couldn't do it.

Q. Do you have any personal recollection of signing the report of December 28th, 1886?

A. I have no recollection of it.

Q. What is your recollection as to where you were at that period?

A. I don't think I was in Lincoln at that time; I think I was up in this northwestern country.

Q. And how employed?

A. I was superintending this railroad building up into Wyoming and Dakota, and the west end of Nebraska; had charge of all the work that would come under the superintendent in the construction of a road.

Q. Do you recall any specific instance of that year that would make your absence necessary?

A. Yes sir, that was the year that we had a great deal of trouble up there I remember, and for that reason I remember that I was a

very large share of the time,—in fact most of the time, right in the center of the winter there—away from home.

Q. That report you have not been able to see, to verify the signature on it?

A. I have not. We had immense quantities of snow and all the troubles that go with construction and snow together up there that winter, and I was away a good share of the middle winter months when the trouble was the thickest.

Q. There is a certified copy of a purported letter by the 1336 Comptroller of the Currency addressed to Mr. C. W. Mosher, president of the Capital National Bank, of date September 8, 1891, which purports to have been written by R. N. Nixon, deputy and acting Comptroller. Had your attention been called to that letter during the trial and the alleged copy of a copy?

A. I read it this morning in the record; that is the only time.

Q. What is the fact whether that letter was called to your attention during the existence of the bank?

A. It was not; the first time that ever I saw that letter was this morning, while I had that record, and will add that I never looked over the part of it that that letter is in; this morning when you called my attention to it was the first time I ever saw it.

Mr. ROSE: I believe that is all.

Cross-examination.

By Mr. THOMAS:

Q. What is your age Mr. Thompson?

A. Fifty seven is my nearest birthday; I will be fifty seven the 28th day of this month.

Q. When did you say you became superintendent of the Lincoln division of the Burlington road?

A. When I was about 24 years old.

Q. What year was that in, if you remember?

A. Well it was, I think, in 1881.

Q. And you continued in that position until when?

A. Until 1890.

Q. What part of the year of 1890?

A. I left the road at the end of December, '89,—that is, the middle of December of '89 and went on a trip to Mexico, and came back in January, but my salary ran on until the end of 1337 January, 1890.

Q. I think you said you became interested in the Capital National Bank when it was organized?

A. Yes sir, as the Capital National Bank.

Q. And prior to that time you were a stockholder in the Gas company?

A. No, I never was until the Gas company that was organized with the combination of the Gas company and the Electric Light company in 1890; that was my first interest in that company.

Q. And is that the time that Mr. Mosher and Mr. Outcalt became interest- in the Gas company?

A. Yes sir, so far as I know.

Q. When did you become interested in the Farmers & Merchants Insurance Company?

A. That was organized I believe, in 1885, and I was interested in that from its organization.

Q. And were Messrs. Mosher and Outcalt interested in that company?

A. Mosher was; I don't remember that Outcalt was; he may have had some stock there,—I don't remember how that was.

Q. And Mr. Mosher owned, I think, one-fourth of the capital stock of the insurance company, didn't he?

A. I can't tell just what his holdings were.

Q. The capital stock at that time was \$100,000?

A. Yes, sir.

Q. And Mr. Mosher at the time the bank failed, or shortly prior thereto had \$25,000 worth of the stock, didn't he?

A. I can't say just what he had; he had some; I don't think there was a time that he didn't have some stock.

Q. Wasn't there some correspondence between you and the Mansfield estate concerning that stock?

1338 A. I think there were, but the amount I don't remember; I think it was perhaps \$25,000.

Q. You were present and testified at the former trial of this case, I believe?

A. Yes, sir.

Q. You didn't meet Mr. Jones, you say, at that time?

A. No sir.

Q. Had you ever met him prior to that time?

A. Not so far as I had any sort of recollection; the first time I ever met Mr. Jones to recognize him was on a trip that I came up from Brazil, during the time I was in the diplomatic service down there, and that was after this case was tried, because I went within a few months after this case was tried to Brazil, and I have been out of the United States practically all of the time since.

Q. You had some diplomatic post at Brazil had you?

A. I went there as Minister in 1892; I was appointed in September, 1892, and I was there for a period of time as Minister and then I was elevated to the place of Ambassador in the same place, and from there I was transferred to Mexico.

A. How long did you continue as Ambassador to Brazil?

A. Well I left Brazil in 1905; I think in November,—I believe it was.

Q. During that period from 1902 to 1905 you say you were not in Nebraska?

A. I was here either three or four times, on a trip, but I wasn't living here; I was living there; my work was there, but I came up here every year, and I think I came twice one year.

Q. Then when did you become Minister to Mexico?

A. My official commission did not expire in Brazil until I was appointed to Mexico, and that was in January, 1906.

Q. And you continued to act as Ambassador to Mexico until what time?

A. Until the end of December '90.

1339 Q. And during the time you acted as Ambassador to Mexico, were you in Lincoln, Nebraska, frequently?

A. Not frequently; I think I wasn't up from Mexico during my official stay down there, from Mexico to Nebraska, more than once a year.

Q. And at which of those periods is it that you claim you first met Mr. Jones to know him?

A. It was, I think, on one of my trips up from Brazil.

Q. About when would that be?

A. Well it would be between 1902 and 1906.

Q. The former trial of this case was in the spring of 1902?

A. Yes, I think in May, 1902.

Q. About how long was it after that?

A. Well sir, I couldn't tell. I never even knew Mr. Jones well enough to recognize who he was until something more than two years ago; he was in the hotel in Lincoln one day and I passed him by without recognizing him. Mr. Mullen touched me, and he says "Do you know who that is" and I turned around and looked at him, and my first thought was to tell Mullen that I didn't, and then I said "Yes, that is Jones of Seward." And that was not a great while before Mr. Jones and Mr. Bignell made a trip to Mexico, which I think was two years this winter, and I entertained them down there for a couple of days.

Q. Then prior to meeting him during the time you were Minister to Brazil, which you say was some time prior to 1906, you had no acquaintance with him.

A. No sir, I had no acquaintance with Mr. Jones at all, until his trip to Mexico, but I had met him as I told you.

Q. Where do you remember of ever meeting him before that?

A. I told you that I was introduced to him once on some of those trips that I made from the foreign post, but I didn't meet
1340 him again until that time in the hotel at Lincoln, which was some time just before his trip and Mr. Bignell's trip to Mexico.

Q. Those are the only times you ever met him?

A. Yes sir. As I said the other day a man might come into my office, as Mr. Jones said on the stand here, on a business trip, like he and Mr. Norval, he said, did, with reference to some cars that they wanted taken out of a train, and I wouldn't know in ten minutes who it was, if somebody else did the talking.

Q. But you would remember if you had met him on personal matters, I presume you would have remembered that?

A. I should think I would; anything of any very great importance, I think I would probably remember him.

Q. And you never had any correspondence with him of any kind?

A. I wouldn't say that; that is another thing; correspondence is one thing and meeting a man is another.

Q. Have you ever had any correspondence with him?

A. Oh yes, there has been some little correspondence,—perhaps a couple of letters; I don't remember what there may have been, but I think there has been a letter from him to me, and one from me to him perhaps.

Q. Anything prior to that time?

A. I think very likely there has been.

Q. How far back?

A. I couldn't tell you about that.

Q. Had you ever had any correspondence with him prior to the former trial in this case?

A. Very likely.

Q. Concerning what matter?

A. Well I couldn't tell you about that; correspondence
1341 is something that is going on all the time from a man to men everywhere about all sorts of things.

Q. Would you remember if you had any correspondence with him?

A. I doubt if I would, unless it was called to my attention.

Q. Do you remember of writing him a letter in 1900?

A. I wouldn't say I did not; It is quite possible I may have done
it.

Q. Where were you in 1900?

A. In 1900; what time in 1900?

Q. Well at different times during the year?

A. Well in 1900 I was—the first part of January—in Mexico and got back from there early in January, and early in February I went to Europe and I was in Europe until late in the summer or early in the Fall and then I was here after that the most of the time. I say most of the time,—that was when the work of the reconstruction of the gas plant was taking shape, and I was here from that time on a great deal, buying and putting in electrical machinery and steam machinery.

Q. That reconstruction work was in 1902.

A. No, I say the work of getting ready for reconstruction, when the gas company was acquired.

Q. 1901 I was inquiring about.

A. Oh, I beg your pardon. I think I probably was here, I don't remember. Let me think of what 1900 was. In 1900 or 1901, I can't remember which, Mrs. Thompson and I were in Europe through the summer time.

Q. In January 1899, that is during the 1899 session of the legislature you were a candidate for the United States senate.

A. Yes, sir. I had forgotten that little incident.

Q. And don't you remember of meeting Mr. Jones and Mr. Norval at that time?

1342 A. I do not; I met pretty near every man in the state at that time that thought he had any political influence.

Q. And in 1901 you were again a candidate for the United States senate?

A. That would be 1901, you said first 1899?

Q. The first question was if you were a candidate in 1899. And the second question is during the 1901 session?

A. I was a candidate two times, two years apart.

Q. The second time then was in 1901, at that session of the legislature?

A. That would be the winter of 1890 and 1891?

Q. They were electing a successor to Senator Hayward.

A. There were two to be elected that winter.

Q. And do you recall of there being a member of the lower house from this county by the name of Beetly?

A. Yes sir, I remember very well.

Q. And don't you recall that you had headquarters in the Lindell Hotel?

A. Yes, sir.

Q. And do you recall of having sent to Mr. Jones to come and see you?

A. No sir.

Q. And isn't it true that Mr. Eaton was one of your active workers during that campaign?

A. No, Mr. Eaton was at that time a dispatcher on the Burlington road,—you mean C. L. Eaton,—he was often around there. He wasn't what you would call an active worker for me, although he did some little work, chiefly on his own volition however.

Q. And isn't it true that Mr. Beetley, representative from this county, had been supporting you in your candidacy for the United States senate?

A. Yes, sir.

1343 Q. And isn't it likewise true that you had been informed that Harry Jones would oppose your candidacy, and was endeavoring to induce Mr. Beetly not to vote for you?

A. I don't remember that.

Q. And don't you remember of calling Mr. Jones to your room at the hotel and that Mr. Jones, and I think Mr. Eaton and I think Mr. Norval came to your rooms, and you asked Mr. Jones if he couldn't lend you his support for the United States senate; do you recall that?

A. I do not. Why should I have done that; Mr. Beetly didn't need very much urging.

Q. And isn't it likewise true that you had been informed that Mr. Jones came to Lincoln for the purpose of inducing Mr. Beetly not to support you for the senate and that you spoke to Mr. Jones and asked him to desist from his efforts in trying to get Mr. Beetly's vote from you?

A. I have no recollection of that at all.

Q. You were quite well acquainted with the leading Republicans throughout the state were you not?

A. I knew many of them.

Q. And during these campaigns of yours for the United States senate you made it a point to become acquainted with them did you not?

A. Yes sir, certainly.

Q. And you were acquainted with the Chairmen of the various committees, that is the State Central Committeemen and the Congressional Committeemen?

A. Of course in my efforts there to obtain an election I made it my business and made an effort to become acquainted with as many of them as I could and to get their support so far as I could.

Q. And at that time Mr. Jones was Chairman of the Congressional district embracing this county?

1344 A. That might be, but I wouldn't remember it as being so if it was.

Q. But you would have known it at that time, wouldn't you?

A. Very likely.

Exhibit "A-T" identified.

Q. I hand you Exhibit "A-T" and will ask you if that is your signature?

A. Yes sir, that is my signature.

A. And I will ask you if that is not a letter that you wrote to Mr. Jones in May, 1900?

A. That is my letter, yes sir.

Q. And at that time Mr. Jones was the Congressional Committeeman from the Fourth Congressional District, was he not?

A. That appears to be so. A letter of introduction wouldn't mean so very much from me to a committeeman. It would by no means mean that I knew him.

Q. But if you had sent for him in connection with a reported effort on his part to get Mr. Beekly's votes from you, you would probably remember it?

A. If Mr. Jones had been sent for and had come to me and had been with me long enough to impress me I should have remembered it, but in a time like a senatorial campaign, when I met just literally thousands of people, you might talk with a man a minute or two minutes, more or less, and the thing would pass out of your mind, and when it was gone you might remember the occurrence and you might not remember the name or the man.

Q. Do you remember this occurrence or this controversy in regard to Mr. Beekly?

A. I never remember of talking with Mr. Jones about Mr. Beekly.

Q. Do you remember of having any difficulty in hold- Mr. Beekly's vote?

1345 A. I remember Mr. Beekly said to me on more than one occasion that these people were trying to get him to leave me but he says "I will never do it".

Q. What did you say in regard to having signed any letters written to the Comptroller of the Currency while you were a director of the Capital National Bank?

A. Why did I say about it?

Q. Did you say you had or had not signed letters to the Comptroller?

A. I don't remember what I said about it, if you are asking me generally.

Q. What is the fact as to whether or not you did sign letters that were directed to the Comptroller of the Currency while you were a director of the Capital National Bank?

A. I wouldn't say that I hadn't signed letters to him; if there were any reasons for doing it and they were matters that were presented to me I no doubt did it.

Q. You have seen the letters from the Comptroller, copies of which have been offered in evidence in this case have you?

A. To him, or from him?

Q. To him.

A. To what do you refer?

Q. The letters that have been offered in evidence. I refer in the first place to letter of date September, '92, which is identified by the reporter as "Exhibit x943", did you sign the original of which that purports to be a copy?

A. It is very likely I did. I couldn't tell from this.

Q. And did you sign the original letter to the Comptroller of date February 19, 1892, of which "Exhibit x944" is a copy?

A. Yes sir, I think I signed that one.

1346 Q. And did you sign any other letters?

A. I don't remember that I did. This one here I remember of signing this;—this first one, this February letter I remember, but this first one I haven't a very clear recollection of.

Q. Did you ever write any letters to the Comptroller that were not joined in by the rest of the directors?

A. I think not.

Q. Did you ever write any other letters than these to which I have called your attention?

A. Well I would have to have something to call my attention to them; I don't think I did; I don't remember of anything more. The one letter I remember because it was a matter that was brought to my attention there and the letter was written, but that is the only one that I have any clear remembrance of. It was one that was addressed to him with instructions to him to bring it to the attention of the directors.

Q. You say you wrote no letters to the Comptroller, personally?

A. I am of the opinion that I never did.

Q. But you wouldn't be sure about it?

A. Well I would be pretty sure, unless there was some evidence that I had done it, for I don't remember anything of it.

Q. You are not sure enough though to say that you did not?

A. Only as I have said.

Exhibit "au" identified.

Q. I hand you Exhibit "a-u", and will ask you if that bears your signature?

A. Well that would be somewhat questionable whether that is my signature.

Q. Isn't that your original genuine letter that you wrote to the Comptroller of the Currency?

1347 A. Well I think that is my letter although that signature really might not be mine. I had a conductor on the road here once that could write my name as well as I could,—

Q. You don't pretend to doubt but what you wrote that letter?

A. No, I think I wrote that letter.

A. Now do you think you ever wrote any letters to the Comptroller?

A. That is a pretty difficult thing for a man to remember eighteen years, just what he did, without something to call his attention to it. If I have and you call my attention to it,—if I wrote them I won't deny it.

Q. You say you knew nothing about this letter of September 1891? Never heard about it?

A. No sir that letter never came to my attention in any way at all.

Q. You are positive as to that?

A. I am positive about that. I have read it in the record here, and there is nothing in that that makes me think that I ever saw it before, or heard of it.

Q. Was there ever any letter written by the directors in answer to that?

A. Well if I never saw it I wouldn't be likely to say there was a letter in answer to it.

Q. Would you say there wasn't?

A. I don't remember of ever having taken any part in any letter of that sort.

Q. You knew of the paper of E. W. Mosher and Mr. Small that was in the bank, didn't you?

A. Well I knew of that investigation. The Mosher matter came up through the bank having been doing business seemingly through an arrangement between the two Moshers. The Small matter was a matter that was known there because of the failure of Small, 1348 and the effort that was made as reported from time to time to pay the thing out from the securities in the shape of lands that the bank had.

Q. Do you have any recollection of the Comptroller of the Currency ever calling to the attention of the officers of the bank the matter of overdrafts?

A. He only gave the board a letter from him calling attention to overdrafts and other matters.

Q. Was there any action taken by the directors in that regard?

A. Yes sir, I think they wrote him a letter.

Q. And do you remember of anything coming out concerning the fact that your bank carried a premium account of four and one-half percent United States Bond, which had no premium value on the market?

A. Well I wouldn't remember just now from my memory what there was in that; it covered several matters, but in detail I can't tell you what it was.

Q. And calling your attention to overdue paper, which was classed as bad debts?

A. Well in detail I can't tell you what that letter of the Comptroller's covered, nor what he answered to it. I have read that record there; I will tell you without any hesitancy at all that I have read that, and that is my memory of it.

Q. In that letter the Comptroller criticised the account of overdrafts, didn't he?

A. That was one of the things that was spoken of in that letter as I remember it.

1349 Q. And it also referred to the Mosher and Small loans which they considered excessive?

A. Very likely; I wouldn't undertake to say that it was or was not so; very likely it was, because those are things that the Comptroller could have spoken of, and it would be a natural thing for him to do.

Q. And your attention was called to that, and that is what called for the explanation on the part of the directors.

A. Well the Comptroller's letter,—whatever it was, was what caused the letter to the Comptroller explaining the matters.

Q. And his criticism was that you were carrying these loans in an excessive amount inasmuch as the capital stock was only \$300,000.

A. Well I wouldn't have any recollection as to what he did write about that, but I doubt if there is any criticism from the Comptroller,—none that I remember of anyway, of any specific loans that would aggregate over the amount that would be permissible to any one man.

Q. Isn't it true that they were criticising the Small loan and you explained that it was on account of some real estate that you had redeemed?

A. I didn't understand that that is what you meant. I understood from your question that you had especial reference to some excessive loans to one man.

Q. That is what I refer to,—the Small loan.

A. The loan of Small there grew out of the original loan, or loans, that aggregated something like \$20,000 I believe. Then the buying of the land, or paying mortgages on land that was given the bank as collateral brought the amount up to something over \$50,000, as I remember, which of course was making an excessive loan to one man, but that was protecting money that was loaned.

1350 Q. But that is one of the things that the Comptroller spoke of?

A. I think possibly it was.

Q. Then you said something about E. W. Mosher; the books showed excessive loans in the matter of E. W. Mosher's did it not?

A. Very likely because under the arrangement that Mosher had made there that might have shown as an excessive amount to Mosher, when in reality it might not have been.

Q. Well did that show as an excessive loan to E. W. Mosher?

A. I think it did.

Q. And that thing was called to the attention of the officers in this letter, and you explained how it happened?

A. Yes sir, I think that is right.

Q. Then you knew about the E. W. Mosher matter.

A. I knew of it in that way: it came up and was a matter of discussion, and the directors had a meeting which I don't think I was at, but the directors had some criticism of the way Mosher had been sending money up there, and insisted that he endorse those notes or

stop the arrangement, and it was instructed, I believe, that he endorse the notes and the thing might continue under that plan.

Q. And quite a large number of loans were made out in that county—York county—in that way?

A. Well under the arrangement as it was inaugurated, I think, by Mosher, and afterwards agreed to conditioned that Mosher endorse the notes, the bank was sending money up there for Mosher—or Stark and Mosher—to loan, and the collateral that they took for the loans that they made was sent to the bank,—the Capital National Bank—and held as collateral to E. W. Mosher's note that would be taken and endorsed by Mosher at the time the money was sent to Mosher & Stark,—or Mosher—I don't know how that was carried,—it was either Stark & Mosher that were partners,—or Mosher.

Q. In fact both ways.

A. It may be, I don't know as to that, but under the arrangement the collateral which was taken for all the money sent up there was sent in to secure the notes given by E. W. Mosher and endorsed by C. W. Mosher.

Q. And how was that paper secured, did you say? The paper that was taken out in York county, the so-called collateral?

A. I think the security was anything they saw fit to loan the money on,—I don't know.

Q. Well how was it in fact done,—did they take personal notes, or real estate security?

A. I couldn't tell you as to that; I never had anything to do with the details of it, and don't know anything about that.

Q. I think you testified on your former trial that they took a lot of real estate as security and afterwards acquired land by way of foreclosure?

A. Well it would be natural to think that some of the security was real estate.

Q. In fact the most of it was real estate, wasn't it?

A. I couldn't say as to that, I don't know, for that was a matter for the officers of the bank, and those that had charge of the internal workings of the bank to work out in their own way.

Q. You had by laws of the bank with reference to permitting overdrafts, didn't you, Mr. Thompson?

A. Well I couldn't say as to that; I have no recollection as to that.

Q. Isn't it true that there were by laws that the officers were not to permit overdrafts?

1352 Q. Isn't it true that under the by laws as they existed under the Marsh National Bank the officers were not permitted to allow overdrafts, and then when it became the Capital National Bank the directors modified that so as to permit overdrafts with the consent of the president and cashier?

A. I don't have any sort of recollection at this time about anything of that kind.

Q. How many meetings did the directors regularly have, as provided by the by laws?

A. I have no recollection of that.

Q. Isn't it true that you offered an amendment to the by laws whereby the meetings were run down to two a year?

A. I have no recollection as to that.

Q. Isn't it true that at one time in the history of the bank these by laws provided for four quarterly meetings a year and that you offered an amendment and cut out two meetings so as to have just the January and July meetings?

A. I have no remembrance of anything of that sort; it would have been a very unusual thing for me to do—the more the better.

1353 Q. Isn't it true that at the meeting of the directors held in January, 1888 you offered a motion that the by laws be amended to read as follows "Section 14, line 5, erase April and October" with the result that that amendment was to cut out 2 meetings a year that were formerly held in April and October?

A. What character of meetings do you refer to?

Q. The meetings of the directors, Mr. Thompson. You will find the original by laws over here. Calling your attention to page 14 of the Minute Book, which contains the section referred to as having been amended and calling your attention to the fact that the words April and October appear to be crossed out and the reference in red ink "Amended January '88".

A. Very likely that is true; this indicates that, altho' I have no recollection of it at all. That would mean that the directors would meet twice a year as a body.

Q. At the dividend declaring periods. And the fact of the infrequently of your meetings was a matter that the Comptroller criticised, wasn't it Mr. Thompson?

A. Well I have no recollection as to that; I don't know. If he had criticised it in any way that meant anything, of course it would have been changed.

Q. Isn't it true that the Comptroller called attention that more frequent meetings of the directors should be held and that
1354 it appeared that you had only two meetings a year, and that the directors ought to actively participate in the affairs of the bank?

A. When did he do that?

Q. In a letter.

A. I wouldn't probably remember that,—I don't anyway. I don't undertake to say that he did not do that. I would say however that if that criticism was made in a way that meant his displeasure with it that it would have been changed.

Q. The facts are that you did hold but two meetings,—two regular meetings of the board of directors a year, those being at the dividend declaring periods?

A. I think that is the fact—the directors as a whole, but the executive committee was always in session.

Q. And the Comptroller suggested that there ought to be more frequent meetings.

A. I would say that the executive committee; the finance committee, I believe it was called,—either finance or executive, but it

was a committee that had, with the active officers of the bank, absolute control of everything in there all the time.

Q. And they had the active management, you say?

A. They had the active management.

Q. At the time you first learned of the failure of the bank you were in Terre Haute, Indiana?

A. Yes sir, I was in Terre Haute.

Q. You and Mr. Stull had gone to Terre Haute to examine a gas plant, I think you said?

A. Yes sir; I think two gas plants there.

1355 Q. And Mr. Stull was interested with a party by the name of Fearson was he not, of Chicago, who proposed investing in that, or inducing some of his friends to invest.—do you remember the name?

A. Farson, you probably have reference to, because he was a broker there, but he had nothing to do with that scheme at all, so far as I know; I don't know what his understandings were with Mr. Stull.

Q. You don't know who Mr. Stull was representing in those negotiations?

A. I do not.

Q. Isn't it true that he was representing Mr. Farson of Chicago?

A. I couldn't say; I had nothing to do with Mr. Farson.

Q. You were there at the suggestion of Mr. Stull?

A. No, that was hardly it; the gas plants over there were supposed to be for sale, and I can't just now recall how the thing reached the point where I made a trip over there, but Mr. John Walsh.—John R. Walsh who was then president of the Chicago National Bank was the one who I was going for, and I was acting for him only in this way, that if the plants could have been gotten hold of that I was to have an interest, but the money that was to be paid for the plants, if a price could be agreed upon, was to come from Walsh.

Q. But the fact is that you and Mrs. Thompson and Mr. Stull left Lincoln together and went by the way of Chicago, did you not?

A. Well I don't remember; that might very likely be so.

Q. And you left her at Chicago while you and Mr. Stull went to Terre Haute.

A. That might very likely be true, while I don't remember about it.

Q. You wouldn't say that is not so?

A. No, because that is her home and she was frequently
1356 going there.

Q. And when you got to Terre Haute you were advised of the failure of the bank?

A. Well while I was there I was advised of it.

Q. And you immediately started west?

A. Yes sir; I immediately came back to Lincoln.

Q. Well isn't it true that Mr. Stull also came back, by the way of Chicago, and got Mrs. Thompson, and you came straight home without going to Chicago, by the way of Peoria?

A. I don't remember that that is not so.

Q. Isn't it a fact that you came home by the way of Peoria; that you wired Mr. Mansfield to meet you on the way home, and that you were behind a wrecked train and were late and didn't get to see Mr. Mansfield?

A. I think that is so.

Q. And Mr. Stull came home by the way of Chicago?

A. I don't remember about that.

Q. But you do remember of coming home by the way of Peoria?

A. Yes, sir.

Q. And wired Mr. Mansfield to meet you there?

A. Yes sir, because he was the father-in-law of Mr. Mosher, and I very likely did.

Q. You recall that circumstance do you not?

A. Yes sir, I think I went that way; that would be the quickest way I could get to Lincoln from Terre Haute, if the connections were direct from there; I don't remember how they were, but that is the quickest way I could get to Lincoln.

Q. And while you were in Terre Haute you received a message from Mr. Whedon announcing the failure of the bank?

A. I think it was Mr. Mullen, my secretary, that wired me.

Q. You wouldn't be certain about that?

A. Oh, I think Mr. Mullen wired me.

1357 Q. You showed the telegram to Mr. Stull and it was from Mr. Whedon.

A. I thought it was Mr. Mullen, but I wouldn't be certain about that.

Q. What time did you get to Lincoln, Mr. Thompson, on your return from Terre Haute?

A. The day, or the time of day, do you mean?

Q. Well both.

A. Well I can't be sure as to that, but it is likely that I got there on Tuesday morning, and probably on Burlington No. 7, that got there near noon.

Q. Isn't it true you got there on Burlington No. 1, that got there at 5 a. m.?

A. I couldn't tell as to that; I don't remember what train I travelled on; I got there as soon as I could I know.

Q. You were a witness in a case in the district court of Lancaster county in which the Farmers & Merchants National Bank of Galva, Illinois, was plaintiff, and yourself and a number of others were defendants were you not?

A. When was that?

Q. Well the case was begun shortly after the failure of the Capital National Bank—I think it was in the courts for a number of years?

A. About eighteen years ago,—yes sir. That was a case—well of hand I don't remember what it was for; it was a case against Mosher.

Q. You remember being a witness in that case?

A. I was president of the Gas company; I don't know whether I was a defendant as that, or for myself.

Q. Well both, wasn't it?

A. Possible.

1358 Q. And since you have been in court here you have seen the Bill of Exceptions which contained the testimony in that case?

A. You mean I have read it?

Q. Yes sir.

A. No, I have not; I started to read them here one day, the only opportunity I have ever had to read them was here on that table there and I read at them probably twenty or thirty minutes and that is the only time I have seen them.

Q. Had them all afternoon one day, didn't you?

A. That is the only time I had to look into them, and you took them away that night.

Q. That is the Bills of Exceptions and the record that your counsel demanded of us to give to you?

A. That is the one, yes sir, but I never finished reading it.

Q. Mr. Mullen has examined it?

A. No sir, Mr. Mullen and I have never spoken about that record.

Q. Mr. Mullen never examined it?

A. I don't know as to that.

Q. Calling your attention—you say you have not read over your testimony in that record?

A. No sir, only a part of it; I started to read it and wanted to read it after you delivered the record up, but I never did it.

Q. You remember being a witness in that case?

A. Yes, sir.

Q. And didn't you testify at that time, Mr. Thompson, that you returned from your trip to Terre Haute on Burlington No. 1, that was due into Lincoln at 5 a. m.?

A. It is quite possible I did; I don't remember the train I arrived there on; that testimony was 17 or 18 years ago.

1359 Q. Your testimony at that time—at that time your memory would be clearer than it is now as to the facts?

A. Well it would be clearer as to most facts, yes. Time wipes out some things in a man's memory.

Q. Now you and Mr. Stull and Mrs. Thompson left Lincoln for Terre Haute January 21, at 2 p. m., wasn't it 1893?

A. I couldn't tell you when we left there, but I would think it was before then. January 21st was Saturday; I would think it was before then, but I couldn't tell the day now.

Q. Now referring to your testimony in the Farmers and Merchants National Bank of Galva against you and others, and your testimony at that time, I will ask you if this question was not asked you "At what time between the 11th day of January and the 23rd day of January, 1893 did you leave Lincoln" to which you answered "I left Lincoln on Saturday at 2 o'clock, that was the 21st, I think"?

A. Very likely.

Exhibit "av" identified.

Q. Now Mr. Thompson, I hand you Exhibit "a-v", and will ask

you if that is not your answer in garnishment in the case to which I referred,—that is, where you answered personally as garnishee, and see also if it bears your genuine signature?

A. Shall I read this through?

A. No, just see if it is your signature.

A. Yes, sir.

Q. And do you recall that as your answer in this garnishment proceedings in the case in which the Farmers & Merchants National Bank of Galva, Illinois, was plaintiff, and yourself and others were defendants, and at this time I want to call your attention to the same question and answer which appears in the same, with your signature: "At what time between the 11th day of January and the 23rd day of January, 1903 did you leave Lincoln?" Answer: "I left Lincoln on Saturday at 2 o'clock Saturday, that was the 21st".

A. It seems as if it ought to have been before that, but it might have been the 21st.

Q. Now as a matter of fact that answer in garnishment was made on the 4th day of March, 1893, wasn't it?

A. Yes sir, that appears to be the date.

Q. Just a trifle over a month after the failure of the Capital National Bank?

A. Yes, sir.

Q. And the probabilities are that your memory of the transaction at that time would be better than it is now?

A. I should hope so. There are some things a man likes to forget.

Q. Now at the former trial of this case, I believe you stated you left Lincoln on that occasion on Tuesday or Wednesday of that week preceeding the failure, did you not?

A. I may have done it; I gave my best recollection of it at the time. I presume I said I believed it was then. If you will permit me to say, I hardly see how I could have gotten from Lincoln to Terre Haute before about Sunday night; left there on the 21st—that might possibly be, and then if I got the telegram relative to the failure on Monday I could hardly have gotten back to Lincoln before Wednesday.

Q. Well, isn't it true that you got the telegram on Sunday?

A. I am not certain as to that, but I couldn't have gotten to Terre Haute before Sunday evening, I wouldn't think.

Q. If you left Lincoln at 2 o'clock in the afternoon, you would have gotten in Chicago early the next morning?

A. The train that left Lincoln at 2, got there somewhere about 9 o'clock in the morning, and then it would be evening before we could have possibly got to Terre Haute, even if we got out of there soon afterwards.

Q. How far is it from Chicago to Terre Haute?

A. Well isn't it about a couple of hundred miles; I don't know just how far it is.

Q. Just a two or three hours' ride?

A. I think it is longer than that, but I don't know how far it is.

Q. Was Mr. Stull with you when you got your message?

A. I think he was.

Q. Did you show it to him?

A. I presume so.

Q. I refer of course to William Stull.

A. Yes sir, I to.

Q. And is it true that that morning before office hours Mrs. Mosher telephoned to you to come to their home, on your return from Terre Haute, that same morning before office hours, Mrs. Mosher phoned you to come up to their house?

A. I don't remember that she did; I went up there just about as soon as I could; I don't remember that she telephoned to me.

Q. Didn't you so testify in this same Galva bank case?

A. Very likely I did, but if I went there—that would be an incident—I went there that's a fact.

Q. That very morning after you got back from Terre Haute?

A. Well I don't remember when I went, but I went there that day; my memory is I went up there just as soon as I found out what the conditions were around there.

Q. Well a message had informed you what had occurred?

A. Well, that the bank had failed, but there are a whole lot of different kinds of failures of banks; some are one thing and some are another; this seems to have been one of the other kind.

1362 Q. In this same testimony of yours in the Galva bank case as I will refer to it, you were interrogated concerning your trip made from Terre Haute, and this question was asked you: "Where were you on January 23rd, 1893, on Monday morning, the first morning the Capital National Bank failed to open its doors?" to which you answered, "I was there in Terre Haute, Indiana, and I left there Sunday, or Monday night I left there on my way home." Question: "On your way home did you stop at Peoria?" to which you answered "No, sir. If I remember right I sent Mr. Mansfield a telegram to come down to the train and meet me, but he didn't come down; the train was late and the train that I was on was behind a wrecked train and when we got in Peoria was several hours late." Do you remember of that question being asked you and of making that answer?

A. Yes sir, I think I did.

Q. How long after that were you in Peoria?

A. I went over to Peoria not very long after that and tried to get Mr. Mansfield to take care of Mosher's troubles. Mr. Mansfield was a very wealthy man, and there was an effort made to get him to save the situation, and I was asked to go over there and see what I could do with him, and I did.

Q. Immediately upon your return to Lincoln you wrote Mr. Mansfield a letter, did you, telling him that you were disappointed in not seeing him at the train?

A. You have reference to the time I passed through there when I am said to have telegraphed him?

Q. Yes, sir.

A. Yes, very likely I did; that would have been a very natural

thing for me to have done. I tried very hard to get Mr. Mansfield to take care of the situation there before I knew, or anybody else knew what it was; it was supposed to be just an ordinary failure.

Q. And after Mr. Mosher was arrested this Farmers & Merchants Insurance stock that Mr. Mosher held in your company was 1363 held by Mr. Mansfield, was it not?

A. As I remember it that was held by Mansfield as collateral for something that Mosher owed him.

Q. He afterwards turned that over to you and permitted you to use it to endeavor to prevent Mr. Mosher's prosecution?

A. No, that wasn't the idea; he turned that over to me and I brought it to Lincoln and gave it to, I think, Mr. Whedon, and the object of it was, as I remember it, to use that if it could be used to relieve the situation here. You might call it to relieve Mosher, or the bank, or both because if you relieved one you would relieve the other. Mind you, at that time nobody had any idea that the situation there was anything more than an honest failure; everybody was trying to do what they could to relieve the situation and make it possible,——

Q. I will ask you if at the trial in the Galva bank case, to which I have referred before, this question was asked you: "Were you asked by Mr. Mosher or his attorneys to raise, either directly from your own funds, or out of securities in your hands belonging to Mosher, any part of the fund so to be given for his release?" To which you answered "I never was asked to do anything in connection with the thing except to make a trip to Peoria to see what Mr. Mansfield would do to help him out of the trouble"?

A. I don't remember the question, but if I was asked the question I presume I did. I don't remember the question, and I don't remember the answer except as you have it there.

1364 Q. And in another case, I think you testified that this Farmers & Merchants stock was turned over to you to be used if you could, to bring about Mr. Mosher's release, and upon condition that it was to be returned to Mr. Mansfield?

Q. Now isn't it true, Mr. Thompson, that this Farmers & Merchants stock was turned over to you for the purpose of helping Mr. Mosher out of his troubles?

A. That stock was turned over by Mr. Mansfield for me to give to Whedon. Whedon was Mosher's attorney, and Whedon tried as I remember it, to use this to relieve Mosher, but I didn't understand that it was to relieve Mosher at the expense of anybody else.

Q. Isn't it true, Mr. Thompson, that this stock was in your hands, and that you had some correspondence with the Mansfield estate after Mr. Mansfield's death in reference to the return of that stock?

A. I don't remember just where that stock was located, but the best of my memory is that it was in Whedon's hands, and Mr. Mansfield, while he was a very rich man, he was extremely hard fisted, and there was quite a lot of correspondence about it; he had a son working for me by the name of Hank——

Q. That's Henry Mansfield, Junior?

1365 A. Yes sir,—and there was quite a lot of correspondence about the interests that Mr. Mansfield had there that Mosher had charge of, and in a way were turned over to Hank, it he never trusted Hank very much, and he always appealed to me because he seemed to believe in me, and there might have been some correspondence about this stock, but I think the stock was in Mr. Whedon's hands.

Q. Shortly after Mr. Mosher was arrested you called on him in the jail in which he was confined, and he gave you an order for some dividends on his gas stock, did he not?

A. Yes sir, he gave me an order for the disposition of the dividends on the gas stock that as he said the dividends should follow; that is the stock that belonged to him—was in his name he considered he had a right to the dividends on. There were other stocks that he had had that he said the dividends should follow, and he gave me an order for the dividends that he said would be his.

Q. And he gave you that order for dividends amounting to upwards of eight thousand dollars?

A. Yes sir, I think—it wasn't given in that way as I remember it; the order was given to cover all dividends, but they finally aggregated something like eight thousand dollars.

Q. And you withdrew those dividends and put them in a safety deposit box for him, and held that for some years?

A. Yes sir, I did.

Q. And afterwards turned a part of that over to Mrs. Mosher?

A. Yes sir, some of them went to Mrs. Mosher on an appeal for something to live on.

Q. And upwards of two thousand dollars of it was used to buy in some gas stock that had been offered for sale, that you bought in in the name of Mr. Bell?

1366 A. Yes sir. There was a lot of stock in the intricacies of the local situation as it developed, there was a lot of gas stock that was to be sold under Sheriff's sale; that didn't, any of it, as I remember it, carry with it the actual transfer of the stock, but it was putting the stock in a complicated situation that might make it impossible to transfer it for a long time, and entail the gas company in a great deal of litigation, and so under the advice of my attorney I bought in for two thousand, or whatever it sold at, that right, whatever it carried with it. It wasn't anything that was of interest to me.

Q. But you paid for that out of the dividend of Mr. Mosher?

A. I paid for it out of that dividend, yes sir.

Q. Now at this Galva Bank trial, to which I have referred before, was this question asked you; "The amount that had accumulated to Mr. Mosher's credit at the time you reimbursed yourself of the \$500. was the remainder of that, except the \$2,000 and interest already paid to the bank, turned over to Mrs. Mosher in bulk?" Answer: "Yes sir, I turned over to her about \$5,500, something like

that, maybe a little more, I don't remember just how much it was." Do you remember that question and answer in that way?

A. No, I don't remember it that way, but the distribution of it there would probably be as I put it at the time. The question seems to be very much involved.

Q. And the following question was asked you: "Do you remember how you turned it over,—in what form?" to which you answered "In cash." A. "It had all been in a safe deposit vault in cash, and was turned over also in that way. Mrs. Mosher had borrowed money so she told me right along to live on since he was in the penitentiary. I think she rustled around as best she could to get something to live on *on* while he was there." Do you now remember that question?

1367 A. Yes sir. I think that would be the fact, anyway.

Q. And the following question was asked; "In whose name was the safety deposit vault rented that contained this money?", to which you answered: "I don't know in whose name I am sure. I don't know in what one Mr. Mullen kept it in. The insurance company had one there and I had one there for a time but I don't know which one he kept it in. I haven't had one for a year or more." Question: "Do you think this money was kept in yours?" Answer: "I couldn't say. I don't want you to say I am trying to conceal this, because if you had been smart enough you could have gotten this on garnishment most any time. This money has lain there since July, 1895; that was the very first that was taken, and if you folks had been as cunning about that as about some things you might have gotten that money."

A. Yes sir, I remember that very well. Mosher had given an order for that, but I didn't want to distribute it on his order, so to make the thing perfectly secure for any future developments when the dividends were paid I took it and put it in the safety deposit vault, or had it done, from that time on until they were disposed of in the way spoken of here.

Q. And of course you were not telling anybody about that?

A. Certainly not; there is no reason why I should, but if they had garnisheed me and asked me anything about, I would have done just as I said there.

— But of course you didn't tell any of the creditors about it so they could garnishee you?

A. I didn't tell anybody about it. That wasn't anything that concerned me at all, because Mosher gave that order which protected the Gas company; the protection of the Gas company was what I was after.

Q. Couldn't the Gas company have retained those dividends in the proper way without having them withdrawn and put in

1368 ^{a—} Q. What difference did it make to the Gas company whether the dividends were paid or not, or to whom they were paid?

A. Why if Mosher was the owner of the stock, even though he was in prison for any sort of crime, no matter what it was, he would

have a perfect right to dispose of these dividends. Now his order was direct that I should pay those dividends to Mrs. Mosher, but simply because I didn't feel that I wanted to do it and take the chances against whatever might develop in the way of lawsuits against those dividends I went just that far under his order, and to satisfy him I put the dividends away and kept them so the future might develop what should be done with them, but if I had done what he wanted done, I would have paid them from time to time direct to Mrs. Mosher.

Q. He gave you an order to pay the money to his wife?

A. Yes, sir.

Q. But as a matter of precaution to the Gas company, it wasn't necessary that the dividends be drawn at all?

A. Oh no, except if a man owns a piece of stock, the man has a right to dispose of it as he likes.

Q. But the fact is that so far as the Gas company was concerned, the records, and so forth, it showed the dividends paid.

A. Yes, sir.

Q. While as a matter of fact they were held in the safety deposit vault. The effect of it was to show that the Gas company paid the dividends.

A. Yes, sir.

Q. But didn't show to whom it was paid?

A. I presume the order would show to whom it was paid.

1369 Q. But the order wasn't made a matter of public record.

A. It is likely the secretary of the Gas company had the order; he must have had it, although I as president might have retained it; I don't know how that was.

Q. Now, Mr. Thompson, I think you said at the time of the trial of this case before, I think you said you were interested in several institutions, among which was a bank at Crete, was it not?

A. I had some stock in a bank at Crete.

Q. What was the name of the Bank?

A. The First National Bank of Crete.

Q. Who were the officers of the bank at that time?

A. John L. Tidball was president.

Q. Had you stock in the Fairbury bank?

A. This stock that you are asking me if I had, I think, belonged to the Insurance company, not to me personally. The stock at Crete I think belonged to me, but that I am not certain about, because that came in a trade that Mr. Tidball and I had on a mining matter of some sort, and just what the ownership of that was I don't remember.

Q. How much was it?

A. I think it was five thousand dollars, but the Insurance company had stock in the Fairbury bank I think it was, and a bank in St. Joe, and one in Tecumseh, at one time.

Q. At the time the bank failed you had stock in the Bank of Fairbury?

A. Myself?

Q. Yes, sir.

A. No sir, I never had.

Q. Do you recall Mr. Thompson of having made a public statement in the State Journal just a day or so after you returned from Terre Haute, concerning the failure of the Capital National Bank?

1370 A. I published one?

Q. Yes sir, over your own signature?

A. I published one over my own signature?

Q. Would you say you did, or did not?

A. I wouldn't say either one; I have no recollection of it at this time.

Q. Did you give out an interview, or rather a signed statement which was published in the Journal, in which you reviewed the different institutions in which you were interested at the time of the failure of the Capital National Bank, in which you stated that you had stock in the Crete Bank, and in the bank of Fairbury and in the Aurora Bank, and among other things you reviewed the amount they had on deposit in the Capital National Bank at the time of its failure to indicate your good faith?

A. Very likely that is so, and that same thing would apply to the insurance company as it did to me personally. There might not have been a differentiation between myself as president of the insurance company and myself as an individual, because I was really in same place to the one as I was to the other. I had absolute control of the insurance company money matters, and I owned a very large share of it. When I sold out a little bit later I owned over half of it.

Q. At the time of the failure of the bank, you owned how much?

A. Of the insurance company?

Q. Yes sir, at the time of the failure.

A. I can't tell, but I owned a very large percentage of it.

Q. You owned about one-fourth of that didn't you?

A. I might not have had more, but I probably did, because I acquired that stock whenever there was a reasonable opportunity for doing so, and finally I had half of it.

1371 Q. But not at the time of the failure of the bank.

A. I couldn't tell just how much I had at that time.

Q. How much gas stock did you have at the time the company was sold out?

A. Well, I can't say that.

Q. Well approximately?

A. I couldn't say what I had. I was prevailed upon by the owners of the stock to get enough to get the required amount that was asked for in order to make the transfer: I didn't own control of it.

Q. Approximately how much stock did you have?

A. I think I had something over \$100,000 personally.

Q. And what was its capital stock at that time?

A. Well the capital stock was authorized at one million dollars, but hadn't all been issued; there was some of it that wasn't issued.

Q. You said that Mr. Mosher and Mr. Outcalt gave you some gas

stock as collateral for your bank stock, I think, sometime in November, 1891.

A. Yes sir, when I sold the bank stock to them they gave me gas stock as collateral for it.

Q. And then a year or two later than that the stock of the gas company was doubled, wasn't it, practically, and new stock issued—two of the new for one of the old?

A. It was doubled after that but I don't think it was as much as a year or two, but it was after that time sometime.

Q. Before the bank failed?

A. Oh yes, before the bank failed.

1372 Q. That is, the holders of the old stock received two shares for one, with the exception, I think, of 5% which was issued as a sinking fund, isn't that true,—or an improvement fund?

A. Oh, the only way I can make you understand the way that was done, and I don't mind telling you the history of the Gas company.

Q. I am simply referring to your testimony in this other case.

Q. Sometime after you received the gas stock as collateral for that note of \$22,500, which was given you, as you said in payment of your bank stock which had been sold to Mosher and Outcalt, new stock was issued in place of the old, so that each holder of a share of old stock got practically two shares for one?

A. Yes sir, that is right.

Q. Now at the time you were a director in the Capital National Bank, you were interested in these various other banks you spoke of. Now what was the name of the bank at Fairbury, the one you were interested in?

A. The First National Bank, D. B. Cropsey, President.

Q. Who was the cashier?

A. I couldn't say as to that.

Q. And the bank at Aurora, what bank was that?

A. The Aurora State Bank.

Q. Who were the officers of that bank?

A. Well I was the president of that bank.

Q. And you also became a stockholder in the American Exchange Bank at Lincoln, I think you said?

A. Yes, sir.

1373 Q. And I believe vice president in January 1892?

A. Well I said I thought it was January, but the date I couldn't fix. They had been at me to come over there for some little time and wanted to make me Vice President, and finally I consented to do it.

Q. Now, Mr. Thompson, I will ask you this question, if very soon after your return from Terre Haute, you published an article in the Lincoln State Journal, under date of January 26th, 1893, over your own signature as follows:

"To the public: I am surprised and deeply grieved to learn on my return from Terre Haute, Ind., where I have been on a business trip with Mr. Wm. Stull, that I am in a way to blame by some

"of the public for the condition of affairs at the Capital National Bank.

"A \$1,000 in stock has been my total holding in this bank since November, 1891, for over fourteen months, and this amount of stock I now hold. My business relations with the bank have been practically that of others who have done business regularly with it; that is, I have been a depositor, having kept four accounts there—one for the Gas Company, one for the Insurance Company; one for the Aurora State Bank, of which I am President, and my personal account. All of these accounts were kept in the Capital National Bank in the usual way until it closed its doors, except my personal account which was transferred to the American Exchange National Bank at the time I was elected a director and Vice-President of that bank at its last annual meeting. In the three accounts herein named as having been kept with the bank there is something over \$20,000, which I believe is more than any other one depositor except the state has in the closed bank.

"Besides this, both the First National Bank of Fairbury 1374 "and the First National Bank of Crete of which I am a stockholder have accounts with the Capital National Bank, but at this time I do not know how much they have on deposit there at the time it closed its doors. In addition to the sums given as above on deposit by the three institutions that I am connected with, I gave before leaving for Terre Haute a check to the Union Savings Bank and one to the Lincoln Savings Bank for \$3,000 each as a deposit for the Farmers & Merchants Insurance Company. As these checks were given on the morning of the day the bank closed its doors I considered myself morally, if for no other reason, liable to the two Savings Banks for any loss that may occur on account of them, and I shall see that these banks suffer no loss because of the deposits which they accepted from me so soon before the failure of the Capital National Bank.

"In explanation of the fact that the transfer was recorded on Monday morning from Mr. Outcalt to me of his farm known as Grassland Stock Farm and the stock on it and a mortgage from Mr. Mosher to me covered his personal effects, I will say, that a deed to the Grassland Stock Farm and Mr. Outcalt's stock was given to me, with a deed to a stock farm in York county, some weeks since to be held as collateral in lieu of the Gas stock that I held for more than a year as collateral to the note for \$22,500 given by Mosher and Outcalt and held by me.

"The chattel mortgage on Mr. Mosher's personal effects was given by Mosher without my solicitation or knowledge beforehand that it was to be given to secure \$2,000 of stock which Mr. Mosher held in trust six years for my little daughter Laura, and as those deeds were held as collateral they were not filed by me, but when trouble came to the bank in my absence, Mr. Mullen, my confidential man filed them, believing it the best thing to do.

1375 " \$4,000 of my original holdings in the Capital National Bank was sold about two years ago for 33 per cent premium.

"This was at the time when the bank stock was considered work-

"\$1.40, and a transfer had taken place only a short time previous
"at this figure. \$3,000 of this stock went to a Philadelphia lady
and \$1,000 to Mr. G. P. Fancon, who is now as he was then a B. &
"M. employee.

"\$18,000 of my holdings were sold over 14 months ago to Mosher
and Outcalt at a 25 per cent premium, and the collateral I now
"hold given by Mosher and Outcalt is to secure the note given for
"the purchase of the stock. My reason for selling at the time was
"personal such as no one could criticise.

"It is not a pleasant thing for a man to be blamed for some-
"thing that he is in no way responsible for, but in conclusion I
"want to say if, even in a moral sense, I am taking from the assets
"of this bank in taking the collateral, I have anything I am not
"perfectly justified in taking, I will very willingly relinquish my
"claims whatever they may be. \$4,000 will cover my legal indebted-
"ness in this world and I neither have to, nor feel disposed to do
"anything either legally or morally dishonest for any such sum
"of money as there is involved in this case." Signed D. E. Thomp-
son and published in the Journal. Do you remember of publishing
such an article?

A. Yes, sir, I remember that now,—yes, sir. It passed from my
memory all together, but I remember it.

Q. Now in addition to these banks, and having been superinten-
dent of the Burlington road, did you state that you had a line of
railroad hotels?

A. Yes, sir.

Q. In which you were the owner, or half owner?

A. Half owner.

1376-1377½ A. (continued). I was never less than half owner,
and at two different times I was the sole owner.

Q. And after you sold the Farmers & Merchants Insurance Com-
pany you organized the Columbia Fire Insurance Company?

A. Yes, sir.

Q. And since you established a daily paper there at Lincoln called
The Star?

A. Yes, sir, I had.

Q. Now I hand you "Exhibit A-i" and will ask you if you can
read that and understand what it says?

A. I certainly can read that and understand exactly what this
all means. It is liabilities and assets.

Q. You understand here what is listed under the resource column,
what that means?

A. Why Mr. Thomas, anybody that can read can understand that,
but for me to take that and try to verify it by the books——

Q. You understand what it means here under the head of re-
sources, don't you?

A. Well a man's resources are what he has.

Q. And you understand what is meant under the head of liabil-
ities?

A. That means what you owe.

Q. And you can look through this statement and you can tell,

if things are what they purport to be on the face, you could ascertain the condition of that institution, could you?

1378 A. I don't understand how I could; I wouldn't know how.

Q. If those resources are what they purport to be; worth their face as indicated by the report, and the liabilities correctly stated on this report, then you could tell the condition of the bank?

A. If its liabilities are correctly stated I would know that the bank had this much and owed this much.

Q. And if you contemplated making a purchase of the stock of that institution you feel competent to pass upon its condition from these resources and liabilities?

A. From a card of that kind?

Q. Yes sir.

A. Well I think I would depend more on the confidence I have in the people than I would in that.

Q. But simply as a business proposition you could examine that card that I hand you Exhibit "a-i" and from an examination of it you could satisfy yourself as to the value of that stock couldn't you?

A. Yes I could tell that the stock ought to be worth what was shown there.

Q. What the capital stock, surplus and profits indicates?

A. That would be my idea of it.

Q. And you understand that one column represents the resources and the other column the liabilities?

A. Certainly I do, yes sir. But you have got to go a long ways further than the statement to know whether the statement is right or not, but if you pin your faith to a man and he makes the statement that's about all there is to it; if you can't go farther why you are lost.

Q. Calling your attention to Exhibit X986, you would be able to look over that, the list of resources and liabilities, and you could determine from that, if the report were correct, what the
1379 financial condition of that institution would be?

A. If the report were correct I should know what the institution would have beyond its liabilities from that statement, but how would you find out if the report was correct?

Q. Just now I am not on the witness stand, but I will be glad to take the matter up later if you want me to. Now this Exhibit X986 is the same as Exhibit X1047, is it not Mr. Thompson?

A. I couldn't tell about that.

Q. Well examine it. Exhibit X1047 is also a statement of the assets and liabilities, isn't it, giving the items?

A. I couldn't tell about that; it don't indicate that way.

Q. I mean looking at the items, beginning at the top of the list—Capital stock \$300,000. That indicates a liability doesn't it? And the item United States bonds \$50,000. Doesn't that indicate that the institution owns bonds to the amount of \$50,000.

A. I would think so, but I wouldn't really know anything about what that would mean.

Q. Suppose this were headed now Assets and Liabilities of the

Capital National Bank, you would understand then that the item of Stock and Bonds account \$52,913.49 was an asset?

A. I wouldn't know.

Q. So far as the statement would show you would know that wouldn't you?

A. I wouldn't know, no sir.

Q. You couldn't tell anything about that?

A. No, I wouldn't know whether that is an asset or liability.

Q. Then take the next one, Cash \$67,398.46, would you understand whether that was an asset or liability?

A. Well if it was cash belonging to the bank, I would call
1380 it an asset; if it belonged to somebody else it would be a liability.

Q. And Bills Receivable, would you know whether it was an asset or a liability?

A. My understanding of Bills Receivable is that it is paper of value that is held by the institution holding it.

Q. Would it be an asset, or would it — ?

A. I would think it would be an asset.

Q. And you know that national banks have as a rule circulation notes that they issue, National bank notes?

A. Money?

Q. Yes sir.

A. Yes, sir.

Q. And you understand those to be a liability?

A. Well sir, I couldn't tell you whether they consider that a liability or an asset. I don't know.

Q. If you were to issue your note, Mr. Thompson, for a thousand dollars, and circulate it as money, you don't know whether you would consider that as an asset or a liability. Say it was payable on demand to bearer. Would that be your note,—would it be a liability?

A. That would be my liability.

Q. If a bank issues the same kind of a note, wouldn't it be a liability of the bank?

A. Yes sir, but I don't know how they handle it.

Q. Don't the American Exchange Bank issue its notes?

A. I was vice-president, but I have not been for many years.

Q. At the time you were its vice-president didn't it issue notes of this character?

A. I don't know whether it did or not.

Q. Did you ever sign any?

A. I don't know; I have told you frequently I am not making even an effort to equivocate at all; all the intricacies of a
1381 bank are like Greek to me.

Q. I hand you a National Bank note and will ask you if you ever saw anything like that before?

A. Well gentlemen, now when you get to talking about things of this sort, you pretty near bring tears to my eyes, because my whole life has been a struggle, and, my education is not such that

I can tell anything of books or what they mean, and during my whole business life I have had to depend upon men who I have placed confidence in for the well being of my part of the institution that they have had in charge. Now I beg your pardon. If it were necessary for me to understand the books of the Gas company, or of the Insurance company, or of any bank that I have been interested in; if I had to, under the law, understand the intricacies of those books I couldn't have been in business; I would be shovelling dirt on the section, like I had to in the beginning.

Q. Now Mr. Thompson, you don't mean to tell me that with all the immense business transactions you have had, that you don't understand a simple statement like this Exhibit x1046 that I hand you?

A. Mr. Thomas, I will say this, and as my God is my judge I never looked over the books of an institution I was interested in in all my life.

Q. I am simply asking you if you mean to say to me that you do not understand a simple statement like the one I hand you?

A. I could take anything that I could read of course, and if it was an asset and called an asset I would know what it is. Things that I understand like Bills Receivable,—I know that is an asset.

Q. And the mere fact that they're arranged a little different on the card, but show the same columns and exactly the same things,—you don't mean to say you don't understand them as well as the other one?

1382 A. No I couldn't, because that is condensed, and I can tell that.

Q. But if these items were condensed a little bit more you could understand it then?

A. Well I understand what it means here, in a way I understand that thing, but for me to find out whether there is any truthfulness in it, I couldn't do it.

Q. I am simply asking you to say if there is any difference between your ability to comprehend "Exhibit a-i", and this "Exhibit x1047"?

A. I should think there would be a great deal of difference; one is a long statement of assets and liabilities, it seems to be, and the other is a condensed one.

Q. If you were examining a statement with a view to investing in a corporation, you would want to know more about the details than simply a condensed form like this?

A. Well if I were going to invest in a corporation I would have somebody inspect their assets, or else I would do it on faith.

Q. You don't think you could look over the Bills Receivable and ascertain what notes they had?

A. How much they aggregated?

Q. Yes, sir.

A. Certainly I could do that, if I would have the time to foot them up.

Q. You can add can you?

A. Yes sir, in a way.

Q. And subtract?

A. Oh, I guess so.

Q. You can add and subtract and multiply, but haven't learned to—

A. Oh now, I don't think you ought to expose any farther the ignorance of a poor devil like I am.

1383 Q. Isn't it true that you have dealt in vast enterprises, and in the past few years built a railroad in Mexico involving millions of dollars?

A. Yes sir, but there is not a book connected with that concern that I ever saw the inside of,—not one.

Q. But you don't mean to say that you couldn't understand the books if you were to go through them; if they're in a simple statement form you could go through them?

A. Now Mr. Thomas, I could do that; so a boy of thirteen could do it, but that would be my limit when it comes to knowing anything about books.

Q. Now these various banks in which you have been interested; you have kept some sort of an account of what they were doing?

A. Nothing only what the men in charge have reported, and in there the same as that card, or what they would tell me; that's all, nothing else.

Q. These banks in which you have been interested, they sent you statements of their condition you say, but simply in the condensed form?

A. A card like that.

Q. Never have sent you a more itemized statement?

A. I don't have any recollection of it, except that it seems to me that Peterson used to sometimes send me down a brief written statement between times, of what he was doing.

Q. Who is Peterson?

A. He was the cashier of this Aurora bank that I was president of; he is now the president of it; he bought my stock a few years ago.

Q. And he would send you what?

1384 A. It seems to me that he used to between meeting times and sometimes at meetings when I wasn't there, send me down a brief statement. It would be more or less like this (indicating) unless it would be something he wanted my judgment on. I don't have any recollection of anything of that sort (indicating)—he may have done it, because Peterson was always giving the best information he could all the time I was interested there and used to write about all sorts of things, and I presume—doing things as he did—he might have written a good deal about the condition of things there in his bank.

Q. And the other banks with which you have been associated merely sent you condensed statements, such as Exhibit "a-1?"

A. I have never had any statements from any of these banks; the stock in those banks—this one at Crete,—when that became the property of the Insurance company in some way there; it wasn't mine at all, it belonged to the insurance company; the stock was

bought as an investment; the insurance company owned while I was there a lot of what you would call ready money securities, the object being to keep a good deal of our money in securities we could cash if we needed it, and these different bank stocks of which you have spoken were not mine at all; they belonged to the insurance company; they may have been in my name, but they were not mine, except the one at Crete and there was a change came in there through some little business arrangement between Mr. Tidball and I up in Idaho.

Q. The Fairbury bank, and the Crete bank and the Aurora bank?

A. I say all those banks—if I said all,—all excepting the Aurora bank, and this little transitory ownership in Crete. That is what I meant. The Aurora bank the Insurance company never had anything to do with.

Q. These different banks, in which you were interested, either directly or through the Insurance company, issued statements similar to this one I handed you a while ago?

1385 A. I presume they did, because I think all banks do that.

Q. And that's where you got your information as to their condition?

A. Well I never had any information as to the condition of those banks. The stock in those banks was bought on the recommendation of Mosher, as I remember, and they were not very fortunate investments either, as an investment. The bank in St. Joe failed; the bank in Tecumseh failed; the bank in Fairbury has always been good, but there was never any investigation made by me or anybody for the insurance company as to the value of the stock before they were bought.

Q. Now with reference to having checked out some of the insurance account and placed \$3,000 in the Union Savings Bank and \$3,000 in the Lincoln Savings Bank. Is that correct?

A. Well yes, that is correct, and I think there was one more.

Q. That is what I was going to ask you.

A. I don't remember; it was one of the savings banks, but this was the situation as I found it when I got home. These checks were given those savings banks because of the interest—

Q. What rate of interest were they paying?

A. I think 5%. Now I always expect at the end of the year—sometimes then I was short of cash—to make a good statement; I try to have cash enough on hand to make a good statement and then I always get that cash earning interest as soon as I can, and in the Capital National Bank the deposit earned no interest, it was just an open account.

Q. When did you put it in the savings bank?

A. The checks were given on the Capital National Bank for these deposits on the savings bank.

Q. When it became a deposit in the savings bank, it wasn't an open account?

1386 A. It wasn't an open account, but there was no reason for keeping an open account at that time of the year. There

was always at that time of the year more money coming in than we needed for daily business.

Q. Is that the one that Imhoff was interested in?

A. The Union Savings Bank was the one that he was interested in.

Q. You don't remember the third one?

A. No, and I will tell you why. There were three checks given and when I came back two of them had been deposited in the Capital National Bank and credits taken, so that it was a loss to them, that is, it was a loss except what would have come out of the bank in liquidation, and I went to them and said "I don't want you to stand this loss" and they didn't have to, I settled every cent of it.

Q. The way you kept them in the savings banks they were not subject to check?

A. No, not subject to check but a deposit in a savings bank you are always supposed to get if you want to lose the interest; if you want to save the interest why you have to let it go a period of time.

Q. Now Mr. Thompson, you spoke of having some difficulty with Mr. Mosher at the time you sold him and Mr. Outcalt your bank stock. You said that occurred, whatever this episode was, that you were on a train coming home from Chicago to Lincoln.

A. Yes sir, that is what it came from.

Q. That was the reason you insisted on getting out?

A. That was the reason I did get out; I didn't insist on Mosher buying my stock. I called him over there and I said "Mosher, I am going to sell this stock, and if you want it you can have it, and if you don't somebody else is going to buy it."

1387 Q. I think at the former trial of this case that you testified that after that Mr. Mosher and yourself just spoke as you passed by.

A. Well Mr. Mosher and I were not very friendly after that. Of course there were business reasons why we had to be civil.

Q. But you said in your former testimony in this case that after that you just spoke as you passed by.

A. Oh well, that was just a figure of speech.

Q. But you were not on good terms?

A. We were on good business terms so far as it was necessary to be. Mosher was interested in both the Gas company and the Insurance company, and I had to be on reasonably good terms with him.

Q. You didn't force him out of those companies?

A. Well he had more than I had in those companies—he had in the other—but it was immaterial to me because I was managing those companies myself.

Q. In your testimony at the former trial of this case in which you were a witness I will ask you if the following questions were not asked you: "You say you had a personal difficulty with Mr. Mosher?" to which you answered "Yes sir." Question: "About when?" Answer: "That was the day that I sold him my stock, the very day that I sold it to him." Question: "And your relations were not amicable after that?" Answer: "Well we spoke as we

passed each other." Question: "You spoke as you passed by and that was about all?" Answer: "Yes sir, that was about all." You may state if you so testified at that time.

A. Yes sir, I did; I meant just what I said; just as I say now; our business relations were just what they would have to be under those circumstances or what they might be; there might be reasons

for being in a business way apparently friendly after that.
1388 As I say, Mr. Mosher up until that time I always liked; I thought very kindly of him. I liked Mrs. Mosher and I liked the whole Mansfield family; they were people that I had come to know and I liked them, and that night on the train made me pretty angry at Mosher and I went after him just about as hard as I was capable of going after any man for anything.

Q. You had heard previously that he had a woman out at the penitentiary?

A. I heard that but I didn't believe it.

Q. But you had heard some scandal in connection with Mr. Mosher and a school teacher that lived at Lincoln, had you not?

A. No, I never heard of it; the woman that you call the school teacher was the one that he afterwards married.

Q. Hadn't there been some scandal about that, prior to that time?

A. There might have been and I not have heard it; I don't remember that there was. You can hear scandal about most anybody, but you don't always see it like I saw it on that occasion.

Q. And that was the sole reason for the disposal of your stock?

A. Yes sir, I had no other reason at all.

Q. And you took their note on five years' time?

A. Yes sir.

Q. How does it come they didn't pay you the cash?

A. I couldn't tell you as to that. That was his offer when he asked what I would take, and I said I would take what it was worth; the note was worth more to me than the cash; I would rather have had their note at that time than to have had the cash for the stock.

Q. You say you didn't want any security, but he insisted on giving the security?

1389 A. Yes si, that's right. He said "What security do you want?", and I said "I don't ask for any, I don't insist on your giving me any security, you needn't do it." And he says "I prefer to give you security" and I says All right, I am very willing," and that ended it; that was about the conversation and it was agreed that he would give me gas stock of the face value of \$35,000, and it was worth about sixty cents on the face value at that time.

Q. Didn't you in some of your letters to Mr. Mansfield at about the time the bank failed, state to him that the gas stock was worth about sixty five cents after the failure of the bank?

A. Maybe I did; I say now it was worth about sixty cents, this \$35,000 was, after it had been doubled. The first that he gave me was less than that and of course when it was doubled it came to me as collateral.

Q. And it was doubled while you held it as collateral?

A. Yes, sir.

Q. And after it was doubled it was then of the value of about sixty five cents?

A. Well it sold, like all stock does, varying some, but something like that.

Q. But in your letter to Mr. Mansfield you told him it was worth sixty five cents.

A. Possibly I did. I could go further than that because I always contended that it was worth par.

Q. That became practically——

A. Well another company got it, and they filled it so full of water,——

Q. Notwithstanding the water that you got into it.

A. There wasn't so much water that got into it at that time, but the stock didn't increase in value beyond about the sixty cent; we only made it the same value it was before, because the stock 1390 was worth before it was doubled par; then when it was doubled we kept fifty thousand in the treasury; maybe it was a hundred thousand, but something for the use of the treasury, contingencies, anything we needed it for; then my effort was to make the Gas company sufficiently valuable as an earning property, to make that stock worth par, and I was travelling along in that way pretty well when somebody came and bought it.

Q. When you went to Terre Haute to buy these plants, did you have drafts or letters of credit?

A. I had a letter from John R. Walsh saying that he would honor any checks I might make to such an amount to pay for that gas property there.

Q. John R. Walsh of Chicago?

A. Yes, sir.

Q. He afterwards got into some difficulty?

A. Yes sir, but if it hadn't been for John R. Walsh along about the time the banks were having so much trouble in '93, I guess every bank in Lincoln would have busted. I went to New York, together with C. G. Dawes of Chicago, and I. M. Raymond, to get help for our American Exchange bank if it were needed and after being there three days thinking we were going to get help we failed to get it, and Raymond and Dawes turned tail and left me. Dawes went to Ohio and Raymond went home, and I went to Chicago, and I went to Walsh's bank in Chicago; Dawes and Raymond knowing Mr. Walsh, they had asked for help there and he said "I won't give it to you; you keep your account elsewhere, and you mustn't come here in time of trouble and ask for it." We were all three there on our way to New York. They did the talking and they were about to go and he said to me, "Will you tell me what you think about this, Mr. Thompson?" And I told him what I thought of it; that I didn't think the bank would need any help, but under the disturbed condition we might. Mr. Raymond and Mr. Dawes passed out ahead of me, and Mr. Walsh touched me on the 1391 shoulder, and he says "You come back when these other men are gone." And I went back in to see what he wanted, and he said "Mr. Thompson, I am very much pleased with the way you put

the situation out there, and I want to talk with you about it again" so we sat down and talked it all over; the assets of the bank as Mr. Burnham had written it, and I was giving him the letter and he says "You go on to New York, and when you come back, stop here and tell me what you do. We went to New York; we went to Ives' Phenix Bank and couldn't get any assistance, but finally the Phenix bank give us credit for \$25,000, and that was all we could get in New York, and I went back to Chicago and told Walsh what success I had over there, and he asked me if I had anything more from Mr. Burnham, and I says "Yes, here are some letters from him. The outcome of it was that before I left the bank Mr. Walsh says "You can go home and if anything happens out there that you need it, the American Exchange Bank can depend on my bank for anything it needs to pay its depositors. And I have always had a very kindly feeling for Mr. Walsh, although he is in prison now. That very thing gave a better feeling to our bank, and everything steadied down and went all right, when if we had had no assistance only what we could get in New York the whole thing would have failed, and when it failed all the banks in town would have gone.

Q. Now Mr. Thompson, a week or so before the Capital National Bank failed, I think on about January 11, there were some deeds and other instruments given you by Mosher and Outcalt, were there not?

A. Deeds for some land, yes sir. Is that what you have reference to?

Q. Yes sir. And is it true that at about this time a deed executed by Mr. Mosher and wife, and Mr. Outcalt and wife purporting to be dated December 28th, 1892, filed for record January 11, 1893, was given to you in which there was conveyed to you the south east quarter of 19-11-2 in York county, and the south half of the north east quarter of 19-11-2 in York county, 240 acres?

A. Yes sir, and that's the way Mosher protected me and my confidence in him and I didn't have sense enough to know it. The transaction was this. Mosher had,—or I had, I should say this gas stock that I held as security to that note, and I held that gas stock until the time I began to take these lands and Mosher came to me at that time and he said, asked if I would change—

Q. And you afterwards sold this same land to Alexander M. Landon?

A. Yes sir, that is the piece that I sold to Landon; that was one of the pieces I got from Mosher in exchange for the gas stock.

Q. On January 18, 1893, Mr. Mosher and wife conveyed to you by Warranty Deed the north west quarter of 19-12-1, York county, did they not?

A. I can't tell you as to any of the descriptions nor the dates very definitely, but I can tell you the transaction if you want to know.

Q. I have several more I want to interrogate you about first.

A. They all came under the same schedule; I can't tell you about

any of the descriptions; I wouldn't remember a thing about any of the descriptions.

1393 Q. And isn't it true that Mr. Mosher by deed of date January 7, 1893 conveyed to you the southwest quarter of 31-10-1, York county, Nebraska, which was filed January 14, 1893?

A. That very likely is true, because the beginning of it was the exchange of the gas stock, which I held as security, for a few pieces of land, and then afterwards Mosher wanted to exchange other pieces for some that he had given me.

Q. Well now wait until I get through with all my descriptions, and it will expedite the explanation. And isn't it true that Mr. Mosher and wife, and Outcalt and wife conveyed to you by warranty deed the West half of the southeast quarter 20-10-2, York county, the deed purporting to have been executed January 7, 1893 and filed for record January 14, 1893?

A. Very likely.

Q. And isn't it true that Mr. Mosher and wife, and Mr. Outcalt and wife conveyed by Warranty deed the southwest quarter of section 13-12-2, York county at the same time?

A. Very likely.

Q. The deed having been filed January 11th, 1893.

A. Quite likely.

Q. And then Mr. Outcalt deeded to you a quarter section of land in Lancaster county, did he not?

A. Yes, sir.

Q. Known as the Grass Land farm?

A. Yes, sir.

Q. And did you have no deeds filed for record?

A. I can tell you better if you will let me, how it was done and then you will understand it better. Mosher, when he asked me if

1394 I would as soon have land for security as the gas stock I said "Yes"; there was very little talk about it, but I said I would, and he brought me over deeds to several pieces of land up in York and Hamiton counties; I don't know just how many or which pieces he brought then, or brought later. With the exception of the piece in Lancaster county which had no mortgage on it, they all had large mortgages; the whole transaction was one of security to me, and then I had no doubts about the business integrity of Mosher; I wasn't looking for bears or anything of the sort; I was very willing to give him what he wanted, and to take what he offered me as security for that note. Then when he came and asked me to change some pieces that I had for others that he wanted to give me, saying that he had sold or could sell some of those that I had, I very readily exchanged with him, and the thing ran along in that way until the time of the failure and then I could see without putting on my spectacles that the whole thing had been done to bunco me; that was his scheme.

Q. As a matter of fact some of those very conveyances were made to you during the very same week the bank failed?

A. It might be, because I would have taken it the very last day

of the bank and never questioned it,—as to the integrity of the bank.

Q. Didn't Mr. Outcalt give you a Bill of Sale of his personal property at the same time?

A. Outcalt gave me a Bill of Sale of the horses and equipment that was with that farm, but remember the note that was taken for that bank stock was a joint note of Mosher and Outcalt. The deed that came to the stock farm came as collateral security, the same as all of those deeds up here in York and Hamilton counties; and, with that, or later, I don't know which came the Bill of Sale for the

farm property that was on Outcalt's farm. Now my memory 1395 is that that Bill of Sale came while I was away. Mr. Mullen, my secretary, who has had absolute charge of all my papers for near twenty five years, both when I am home and when I am away, thinks he remembers that they came with the deed, but that's a conflict in memory.

Q. And isn't it true, Mr. Thompson, that that Bill of Sale came to you at the same time that you got the deeds?

A. Well I just told you my best recollection of that. My memory was that it came when I was away on this trip to Terre Haute with the one that Mosher sent over there on some stuff to secure this obligation of his for my little girl, but Mullen thinks that it came before.

Q. Now when were those deeds delivered to you Mr. Thompson, as near as you can remember? Some of them purport to be dated in December.

A. I can't tell you just when they were delivered, as they were brought there and later exchanged for others, and so forth, and being a matter of security only there was no question of when they came, or how, when it seemed to be perfectly satisfactory. When they first came I don't remember.

Q. And if this Bill of Sale had been given to you prior to the failure of the bank would you have remembered it?

A. The Bill of Sale from Outcalt?

Q. Yes.

A. Well I haven't remembered it. As I have explained to you, my memory is that I never saw that, and I may never have seen it; it may have been brought over and given to Mr. Mullen because Mr. Mullen has been my only dependency there for 25 years or more. In exchan-
1396 my papers.
ing and taking that security it might not have been done by myself, but with him, because he has had charge of all

Q. You say at the time you took those securities you had no doubt of the financial integrity and worth of both Outcalt and Mosher?

A. No, I didn't; I didn't when I started for Terre Haute.

Q. And if Mr. Mosher had offered to give you a chattel mortgage on his household goods would that have aroused your suspicion?

A. That probably would, because that would have been outside of anything that would have been legitimate security for any debt of that kind, and I think it would.

Q. And if Mr. Outcalt had offered you a chattel mortgage on his household goods, would that have aroused your suspicion?

A. Well I should have felt the same way about it, of course.

Q. And if he had offered you, prior to the failure of the bank, if he had offered you a Bill of Sale of all his chattels and everything in detail, wouldn't that?

A. No, not if it came with a deed to the land as security, because that situation there was not of an ordinary farm; his place there was a stock farm.

Q. Well Mr. Thompson, the fact that you thought Mr. Outcalt worth a great deal of money, would you think it a singular incident that he would want to give you a chattel mortgage or Bill of Sale on a lot of personal property to secure a debt of that kind?

A. I think if that had come to me,—but I don't think it did; I think it probably went into Mr. Mullen's possession; there is where it naturally would have gone.

Q. If it had come to your knowledge would you have been suspicious?

A. No I wouldn't, because that property was a part of that farm, belonged to the farm, and wouldn't be worth a rap without the farm, or one without the other.

1397 Q. At that time Mr. Outcalt was the owner of perhaps two hundred thousand dollars' worth, or more, of stock in the gas company?

A. I can't say how much he had; I don't think he had that much though.

Q. Very nearly so?

A. I can't say as to that. The gas stock, if I remember, was mostly in the name of Mosher and Outcalt together.

Q. But he was supposed to be a very wealthy man?

A. Both Mosher and Outcalt were supposed to be well off; Mosher very wealthy and Outcalt reasonably so.

Q. And you mean to say that it would not have aroused your suspicions to have — man of the reputed standing of Outcalt to give a chattel mortgage on a lot of curry combs and things of that kind, to secure a debt?

A. Well now Mr. Thomas, if that mortgage ever came to my attention I never read it at that time.

Q. I mean the Bill of Sale.

A. I never have read it so far as I know of at all. It is certain I never had read it at that time; I don't think they came into my personal possession, but of course coming to Mr. Mullen, that is in my possession, but Mr. Mullen is the one, as I have said before, that for twenty five years has had charge of everything that comes and goes for me in the way of papers of any kind.

Q. Now referring again to your testimony as given in your answer of garnishment, along in March, 1893, to which I called your attention, I will ask you to state if this question was not asked you: "Were you here at the time that Bill of Sale was delivered to you" referring to the Outcalt Bill of Sale, to which you answered "At the time what Bill of Sale was delivered?" Question: "To the horses,

yes sir?" Answer: Why the Bill of Sale was delivered at the time the deeds were delivered". Did you so answer?

A. I may have done it. My recollection is what I have told you.

Q. The further question was asked you at that time in March 1893: "Was the Bill of Sale delivered at the time the deed was delivered to you?" Answer: "Yes sir, it was." Was that question asked and did you so answer at that time?

A. I couldn't say as to that any more than I said a moment ago, because my recollection as to that and Mr. Mullen's is different.

Q. But this was in March, 1893, scarcely more than a month after the occurrence.

A. In that case again I might say it was delivered to me and it may have been delivered to my secretary. I might say this was delivered to Mr. Mullen, and another delivery made to me, and Mr. Mullen might not say anything about it at the time except to say that it had been received.

Q. And further along in this same testimony, was not this question asked: "In what county is the personal property that Mr. Outcalt gave you the Bill of Sale for—this county or York county?" Answer: "Lancaster". And the further question asked "When was the bill of sale delivered?" And you answered "It was delivered at the same time the deed was delivered". Is that not true?

A. That very likely may be true. If Mr. Mullen's recollection of it is right.

Q. I am asking you for your recollection.

A. I have no recollection at all.

Q. Didn't you so testify at that time?

A. Very likely I did.

Q. If that is your testimony at that time, don't you think that would be the fact?

1399 A. In the way I have explained. That might have been delivered to my office, and gone into Mr. Mullen's possession and the books without my knowing anything about it.

Q. And the question was asked you "Was the bill of sale dated when it was delivered to you?" And your answer was: "I have never noticed whether it was or not; I presume it was". Did you so answer?

A. Well that says so there; I presume so; I don't say it wasn't; I didn't try to qualify it.

Q. If you testified so at that time, what do you say now as to whether or not it is true?

A. Except in the way I have said that whatever may be done through a man's office by a man's secretary, of course it would be true, but there is always a little "come and go" there when it comes to a business man's office, or coming to his secretary.

Q. You don't deny having so testified, do you Mr. Thompson?

A. Oh no, I don't deny it.

Q. Now the agreement that you had to hold these deeds and bill of sale as collateral, was made with Mosher you say?

A. Yes sir, I never had any talk about the matter with Outcalt at all.

Q. And that agreement was not in writing was it?

A. No, I think not.

Q. It was an oral agreement, was it?

A. Why the agreement would consist of nothing as I remember it except asking me if I would take real estate, or him saying he would give me that and take the gas stock, and then later making the changes.

Q. They were verbal statements were they not?

A. Yes, sir.

Q. In March, 1893, you testified that Mr. Mosher came to you with this paper and asked you to take it in lieu of the—
1400 and you were asked "Was that an oral agreement" and you said it was. That is true isn't it?

A. I think so.

Q. Well if it was an oral agreement, Mr. Mosher must have been here in person.

A. Have I said he wasn't?

Q. Then I understood you to say you didn't know whether he delivered the papers to you in person.

A. I am talking about the beginning of the thing.

Q. I am referring to your testimony here where you say that he came to you with certain deeds executed—deeds and bill of sale—and he came to you in person and stated to you, as you have testified, that he wanted you to take these deeds and the chattel property instead of the security you had, and that you consented to it and accepted it.

A. That is very true.

Q. How do you reconcile that with the statement that you didn't see the bill of sale?

A. Perfectly so, and you understand it to—

Q. No, I don't.

A. Well I will explain it to you. You understood from your questions here that this transaction of exchanging real estate for the gas stock covered some little time; the arrangement with Mosher and with me to deliver the one to him and receive the other in lieu of it was the beginning of the thing, and then after that there was no question about it, except he would just bring the one and take the other.

Q. Isn't it true that you testified in this case, that Mr. Mosher came to you with the deeds already executed and the bill of sale already executed signed by Mr. Outcalt, and part of it in Mr. Outcalt's writing, and that Mr. Mosher asked you to take these in lieu of the gas stock, and that he delivered them to you in person in place of the gas stock security?

A. You are speaking of the first time that Mosher came
401 to me?

Q. Yes, sir.

A. I couldn't say that I did, or that I didn't; I told you that the first visit was to ask if I would make the changes. When he first came and I agreed to it it wasn't supposed or understood by me that there was to be any changes after that in the collateral, but as oppor-

tunity was offered for the sale of some of the property that was given as collateral, he came and asked to have the changes made and they were made.

Q. And isn't it true that at the same time—the time before referred to—that this question was asked: "Was that oral agreement that the deeds was intended as a security made at that time?", to which you answered—"I previously said I had stock security but Mosher brought these to me with the bill of sale, part of them signed by him as I remember, and part by Mosher and Outcalt, asking if I would give up the other security I had and take these in lieu of them and I consented to do it and did it". Did you not so testify?

A. That may be true.

Q. And the question was asked—"Was Outcalt present at that time?" and you answered "No sir, he was not".

A. But I didn't say anything in that—

Q. And then wasn't the further question asked you—"Then the agreement was between you and Mosher alone as to the deeds being held as a security for the indebtedness that they were owing you?" And you answered: "It was an agreement he brought them, part signed by Mosher and part by Outcalt and asked if I would exchange what I had for them, and I consented to do it and did it". Did you so testify at this former trial?

A. Very likely, because that is the fact. It may be some satisfaction to you to know that every piece,—everything I had except one piece was confirmed in me after going through all the processes that the receiver could find to go through.

1402 Q. Are you quite sure of that?

A. I think there was only one piece that was taken away from me.

Q. You are not certain of that are you?

A. I think only one; there may have been two; anyway, everything I got or everything that I took Mr. Thomas, didn't near cover what they owed me.

Q. But Mr. Thompson, isn't this the fact, when we get to that subject, that the lands you succeeded in holding were lands that you had succeeded in conveying to innocent purchasers after you had gotten them?

A. Very likely some of them were transferred.

Q. Now the south half of the northeast quarter and the southeast quarter of 19-11-2 in York county, isn't it true that on May 23th, 1893 you conveyed that land to Alexander M. Landon?

A. Yes sir, and afterwards it came back to me.

Q. You sold it to Mr. Landon for \$12,000, didn't you, and he gave a mortgage to you for \$4,200, and you assigned that mortgage to the Farmers & Merchants Insurance Company of Lincoln, of which you were president, and then afterwards that mortgage was foreclosed,—that is, not your mortgage but a prior mortgage was foreclosed,—isn't that true?

A. Very likely. But Landon paid I think three thousand dollars, and there was no foreclosure to do anything with Mr. Landon; I tried to get him to keep the place, and told him he ought not to lose the

money he had in it, but he really begged me to take the place back and he says "I can't pay it".

Q. Isn't it true that there was a foreclosure of the Northwestern Mutual mortgage and the property was taken back in the name of the Farmers' & Merchants' Insurance Company, and a deed made to L. M. Wing?

A. Very likely.

1403 Q. Who is Mr. L. M. Wing?

A. He is president of the Coldwater National Bank of Coldwater, Michigan. You spoke of me transferring them to innocent purchasers. The piece of land in Lancaster county, which was the only one that didn't have a mortgage on it, was held by me in my own name until just a few years ago; I must have had it ten or twelve years.

Q. Which piece have you had that long?

A. The piece in Lancaster county; the Outcalt piece.

Q. Isn't it true that that was foreclosed in this case,—was foreclosed in court and you bought it in?

A. Yes sir, it was done in that way.

Q. The same tract of land that you say you held for ten or twelve years.

A. Yes, sir.

A. And afterwards sold it to Dr. Dayton?

A. Yes sir, but this is the fact that all of these processes were taken to establish my right to my claim, and all the money that I ever got out of all the securities that I had didn't cover all that they owed me.

Mr. ROSE: Was the decree of foreclosure in favor of yourself?

A. Yes, sir.

Q. The only land in which you were decreed foreclosure was the Outcalt land; you never foreclosed the mortgage on any tracts of land that you got in York and Hamilton county, did you?

A. My recollection is, and I think I am right, but I may be wrong—but I think not, that the receiver after investigating the situation as it was, and having his attorneys do it, in order to establish the right to the properties up here that I held as security for this note of mine, agreed that certain ones they would take and others I should take, which gave me what was supposed to be property enough to cover the security that I held there as collateral.

1404 Q. Now, Mr. Thompson, isn't this correct, that the only lands outside of Lancaster county, were those that you had sold before the suit was commenced?

A. How would that apply to the Landon place; it was the only one that was of much value?

Q. But isn't that a fact?

A. I don't know as to that, but I do know this very distinctly that I said to Mr. Hayden,—there never was any effort made to hold anything—

Mr. THOMAS: We don't care for any self-serving declarations just now.

A. There was all the frankness possible in dealing with the receiver of the bank, and he was told very frankly that if there was anything here that I was not entitled to he could have it.

Q. Now in regard to the Hamilton county land, Mr. Thompson, isn't it true that Mosher and his wife conveyed to you by warranty deed the north east quarter of 12-12-5 in Hamilton county, the deed purports to be dated January 18, 1893.

A. Only just as a part of this same transaction that I have related to you.

Q. And isn't it true that on March 29, 1893, you sold that same tract of land to Reuben C. Newman and Nancy B. Middleton?

A. I presume, if the record shows that.

Q. I am asking you for the purpose of showing that the deeds that you retained were those that had been conveyed before the receiver suit was begun.

1405 A. There is no way that I could tell about that.

Q. Now these deeds that you got to the York and Hamilton county lands, when were they recorded with reference to the time you got them?

A. That I can't tell.

Q. Who attended to that?

A. Mr. Mullen.

Q. Were the deeds sent up by you or Mr. Mullen, for record?

A. Why there were no deeds handled there that Mr. Mullen didn't have charge of, so far as I know.

Q. Who attended to sending them to the various counties for record?

A. I think Mr. Mullen.

Q. Do you know whether he did or not?

A. Well I feel very positive about that.

Q. Did he take them up personally, or send them up by mail?

A. I wouldn't hardly think he made a trip personally to have a deed recorded.

Q. And he filed the bill of sale, and the chattel mortgage for you didn't he?

A. Yes, sir, I think he did; he had charge of all of those things; if there had been any exception to that rule that he did it all, why it would have been an exception, that's all. I have no recollection of how it was done.

Q. What is your recollection as to whether you knew anything about this bill of sale of Outcalt's before you left for Terre Haute?

A. The only recollection I have as to that I have recited to you.

Q. Well what is your recollection as to the chattel mortgage?

1406 A. Well that I know I knew nothing about.

Q. You knew about the deeds to the York and Hamilton county lands before you left for Terre Haute?

A. I think all of those deeds were prepared before I went to Terre Haute, I don't know; but that transaction was just a running transaction and covered the changing of securities. My thought

was that Mosher had all of these lands up here; I hadn't any idea that he didn't.

Q. Did you record the deed to the Lancaster county land at the same time you did the deeds to the York and Hamilton county land?

A. I have no recollection as to when they were recorded; it is very likely that the one to the Lancaster county land wouldn't be recorded at all, until the end of the thing.

Q. Why would you withhold the Lancaster land from record and allow the York and Hamilton county deeds to be recorded?

A. I presume it was done on request, if it was done that way.

Q. Request of who?

A. I presume of whoever delivered it; if Mosher delivered it, and he no doubt did, if it was done in that way, it would have been done on the request of whoever brought it there.

Q. Isn't it true that Mosher and Outcalt requested that you do not record or file the papers that they gave you in exchange for gas stock, insofar as it affected the Lancaster county property?

A. Well you know Mosher and Outcalt were the givers of that note; they wanted the gas stock for a purpose that they didn't expose to me and I didn't take into consideration what it was. The Outcalt farm out there was the only real estate that he had; I didn't think he had any interest in any of this up here, so if he had,—if Mosher had brought it for Outcalt and asked that it be not recorded why that wouldn't have meant anything to me at all, because there was a place that to my mind I never thought that he ever expected to lose, and he had his horses out there and they were his babies, and the fact that he would ask not to have that recorded wouldn't mean anything to me.

Q. Isn't it true that when you testified in this bank case that you were asked with reference to these instruments, this question: "Why was that not recorded," and you answered,—“Well they requested me not to record it and for that reason I didn't do it.”

A. Well that is covered by what I said.

Q. “But they didn't make a similar request in regard to the other deeds?” and you answered,—“No, sir.” Is that true?

A. That would all be covered by what I just said.

Q. Did they ask you not to file that bill of sale for record?

A. If that came with the deed that same thing would apply to that, because that bill of sale, as I tried to make you understand before, is quite a different thing from a chattel mortgage on your household goods, you know.

Q. I think you referred to these horses as Mr. Outcalt's pets.

A. He thought quite a considerable of those horses; that is what I say.

Q. They were standard bred trotting horses?

A. They were high bred horses.

Q. He thought a great deal of them?

A. I suppose he thought a great deal of them of course, because he was eternally out there at the farm.

Q. Well didn't he know it would reflect on his credit?

A. Well of course he had to give something as security; I say he had to—he wanted to give something as security.

1408 Q. Isn't it true Mr. Thompson, that Mr. Outcalt was a part owner of a tract of land in York county which was conveyed to you at this time?

A. Not, so far as I know.

Q. Isn't it true that the west half of the south east quarter of 20-15-2 was conveyed to you by Mosher and Outcalt jointly, with their wives?

A. That may have been; that may have been a part of the Small affair.

Q. I understood you to say that he didn't own any other real estate?

A. I said I didn't think he did; he had that farm and I thought that was about all the land he did have.

Q. Isn't it true that the south west quarter of 13-12-2 was deeded to you at this time by C. W. Mosher and R. C. Outcalt and their wives?

A. That may be; I don't know about that.

Q. Then you must be mistaken about Mr. Outcalt not owning any other land.

A. No, I am not mistaken, because I didn't mean to say that I knew that he owned no other land, but meant that a quarter section of land up there with a mortgage on it that might have taken it, and did in many cases, wouldn't mean very much in the way of security. Now Outcalt was never much of a land owner so far as I understood, and Mosher had lots of it, and that was the difference between them. The place that Outcalt had in Lancaster county was a place without any liens against as I thought, and it was good security for his share of that note. I finally sold it for \$12,000. But take that and everything else that I got and it didn't quite cover what they owed me.

Q. Isn't it true that several tracts of land in York county, when they were conveyed to you they were conveyed jointly by
1409 Mr. Mosher and Outcalt and their wives?

A. Well if the records show that it is true; but these conveyances I don't presume I ever saw one of them, after the first ones that came to me.

Q. You don't say that you did not?

A. I don't say that I did not, but just in the natural course of the way things were done in my office, it is not to be presumed that I ever saw one of them.

Q. That is your deduction, and not your memory of it?

A. That would be my conclusion.

Q. But your memory at the time you made your garnishment answer in March 1893 would be better than it is now, wouldn't it?

A. Yes, sir, it would be. But as I said a man may speak of things that he does right now, and his right hand in the next office may be the one that does it. A man wouldn't get very far in this world if he tried to do everything himself, with all the intricacies of business.

Q. Those deeds which you made in which you reconveyed some real estate to Mosher and Outcalt, or either of them, where were those executed?

A. I couldn't say as to that.

Q. Do you remember whether they were executed in the bank or in your office?

A. Well I never went to the office to execute any deeds to them, no, sir. My office was in the Burr block at that time.

Q. Hal C. Young was an employee of the Capital National Bank, was he not?

A. Yes, sir.

Q. The Notary Public in the bank?

A. I presume so.

Q. And didn't he take your acknowledgments to some of those instruments?

1410 A. I don't think he ever came to do it; I think those acknowledgments were taken like they often are,—the name signed and the acknowledgment put on afterwards.

Q. Do you think that is the way this was done?

A. Yes, sir. I guess they—any of them—do that if they know your signature.

Q. You think you didn't acknowledge them in person?

A. I never acknowledged anything at the Capital National Bank, I feel very confident, because I didn't do my business at the Capital National Bank.

Q. But you were down there frequently?

A. Not very frequently, no, sir, I was not—not very frequently.

Q. That was because your relations with Mr. Mosher were not very pleasant?

A. Well my relations with Mr. Mosher were such that I wouldn't have gone down there and visited with him; if I had had a meeting of some sort down there I would have gone, but I wouldn't go down there to visit with him.

Q. You remember Mr. Hal C. Young was an employee of the Capital National Bank during the entire time of its existence?

A. Well I knew he was there; I don't know how long he was there.

Q. Now, Mr. Thompson, you referred to a room at the back end of the Capital National Bank building, to which Mr. Scott referred in his testimony.

A. Yes, sir.

Q. What do you say was the size of that room?

A. Well I went down there this morning to look that over as well as I could; of course it is merged into a big store there now. The whole banking room was the width of one business block; they may be 22 feet or they may be 25, less the walls of the banking room. This room was back of the lobby that run along the
1411 front side of the counter, it was a continuation of that lobby.

Now it couldn't have been more than seven feet wide, and it might have been that long; it might have been a foot or two longer; there is a partition across it at the end of the aisle to make a partition of this room, to partition it away from the aisle.

Q. Isn't it true that there were two vaults at the north end of that room?

A. No, sir.

Q. I mean the south end?

A. No, there were two vaults at the south end of the banking room; one of them was the vault that this room made an entrance to; that room was arranged for people who went into the vault; that was a public safety deposit vault. Every one had a key there that wanted it that was a customer of the bank, and this room was made for people to come there and do the business by themselves, or with anyone else, if they had papers in the vault. Then there was a partition between that room and the banking room, without a door in it.

Q. Was there an open door from that little room into the banking room?

A. I am not certain about that whether there was an opening there. Now that little room, in the very nature of things,—it was a very small banking room,—

Q. You say there were two vaults at the south end of the banking room?

A. One used as a bank vault, and one used for the use of the customers.

Q. And those two vaults extended the full width of the banking room?

A. Extended the full width of the banking room, yes, sir.

Q. And the west vault was the one used for the bank books?
1412 A. The west vault would be the one opening out of the banking room, and would be used for the books, papers, and so forth of the bank.

Q. And the other vault was used for the safety deposit.

A. Yes, sir.

Q. And those vaults were each about the same width, were they not?

A. I don't know about that; I would think not, because the safety deposit vault there wasn't a very deep vault; I bought from Hayden for \$75.00 all of the boxes that were in that vault, and I now have them in the Lincoln hotel.

Q. Isn't it true that the two vaults were about the same width, and that there was a partition at about half way,—that is about the dividing line of the two vaults, and that that partition made the west wall of that little room, and that the little room extended west beyond the lobby,—that is, that there was inside of the banking room inside the lobby here a counter of about two or two feet and a half?

A. Inside of the lobby?

Q. Inside of the banking room, and there was a counter there of about two or two and a half feet in width, and that this little room extended west beyond that?

A. What was inside of that banking room—I don't know, because I never, in all my time in the bank I never was in there.

Q. How do you know the size of it then?

A. I mean I wasn't in where the clerks work; the banking room

was just the size of an ordinary business lot. The lot belonged to Walsh & Putnam. They had three lots.

Q. And what occupied them?

A. Two store- and the bank.

Q. What were the two stores?

1413 A. A drug store and the other was a millinery store.

Q. What was the size of those lots?

A. The whole lot was 75 feet, but the walls themselves wasn't the full depth of the lot because on the back end of this building of Walsh & Putnam, in which the bank was, was a little store with the entry from Eleventh street; these stores, the drug store and millinery store all entered from "O" street. Now what was in the working room there of the bank I don't know anything about, but I am very confident of this that this counter that run along the whole length of this bank clear up near the front extended clear through to those vaults, and the only room there was there that the lobby entered into was the little room that I told you of.

Q. Isn't it true that this little room that I refer to, was sometimes used for small political gatherings?

A. Never to my knowledge; I never was there at a political gathering but there couldn't have been very many politicians in that room at one time.

Q. Are you sure that room couldn't have been as much as eleven or twelve feet square?

A. No sir, it couldn't.

Q. What is the largest you say it might have been?

A. Well I don't see how it could have been, if the lobby was, say seven feet wide, that wouldn't have left any great amount of room for the bank. Now the length of that room might be seven, eight, or nine feet, more or less; it couldn't have been very long, because the room wasn't to be spared, the banking room was crowding everywhere.

Q. What kind of a room did they have at the north end of the building where Mr. Mosher and Outcalt had their desks?

A. Well that was a room that they used there for anything that they had to use a room for.

1414 Q. It wasn't divided off from the rest of the bank?

A. No; if I remember that right it was a room that you could see right down through the bank.

Q. Just a low partition, four or five feet high dividing it from the rest of the bank, or was it divided off with a railing?

A. I was trying to think; I think it was a railing there with a swinging gate in; it seems to me it was, that came out into the lobby.

Q. There was nothing to separate it from the rest of the room, that is, it wasn't enclosed by itself?

A. No, I think not.

Q. Where was it the directors held their meetings?

A. They never held a meeting that I was at that wasn't in the front end of the bank.

Q. When were those usually held?

A. I think they were always held in the evening, as far as I remember they never were held at any other time.

Q. Mr. Thompson, how much money had you on deposit, in your personal account with the Capital National Bank at the beginning of the week of its failure?

A. I can tell you by looking here. (Witness refers to memoranda.) Commencing the 3rd of January I had \$40.20.

Q. Beginning that week.

A. Let me read it right on down. On the 4th I was overdrawn \$92.01; on the 6th I was over drawn \$208.40; on the 13th of January there was \$2090.30.

Q. And on the 17th?

A. No 17th here. On the 18th, \$41.97; on the 19th, \$20.77.

Q. Did the First National Bank of Crete have an account with the Capital National Bank at the time of its failure?

A. I don't know.

Q. Did the Bank at Fairbury?

1415 A. I don't know; I had no control over those accounts at all; nothing to do with them, not a thing in the world.

Q. Now I think you said in your testimony the other day that you gave the same attention and degree of diligence to the Capital National Bank that you did to your other concerns. Is that true?

A. Not exactly that way; that I gave as much attention to the bookkeeping of the Capital National Bank as to anything else.

Q. Didn't you state in your testimony that you gave the National Capital Bank the same degree of diligence and executive ability, as you did your other institutions, of which you were a director?

A. Anyone that I wasn't actively managing, I gave it as much. For illustration, the Aurora State Bank that I was president of, I never gave that any more attention than I did the Capital National Bank.

Q. You didn't give that any attention.

A. The Aurora Bank?

Q. Yes, sir.

A. Oh yes; I went to their meetings as often as I could and when I couldn't I didn't go.

Q. Now in reference to various statements of the condition of the Capital National Bank. When these various statements were made that bear your signature what effort did you make before permitting them to go out in that way to ascertain whether or not they were true?

A. Well my only effort to know the truthfulness of any statement that was ever made there, was simply through the executive committee,—the finance committee and through the officers of the bank.

Q. You never looked over any of the assets yourself?

A. No sir, never.

1416 Q. Never counted any of its money?

A. Never counted any of its money.

Q. Never made any examination into the actual assets at all?

A. No sir, I never did.

Q. Never examined any of the books of the bank?

A. No sir, I never did; there was a committee that always had that in charge, a committee appointed by the directors; a finance or executive committee and the officers of the bank who always did that; I never had anything to do with that; anything on the inside of that bank.

Q. Never looked into the books of the bank?

A. I don't see how a question of that kind can be answered.

Q. I mean you never examined a book of that bank?

A. No I never did; looking into a book is like looking into the Bible, you may look into it and not read it.

Q. You never looked into the Bible much.

A. Well I did a little.

Q. When these statements went out purporting to give the condition of the bank, over your signature, you hadn't at that time any knowledge concerning its actual condition?

A. Nothing at all, except the information I would get from those I had trusted.

Q. But so far as personal knowledge went you knew nothing?

A. So far as personal knowledge went I knew nothing.

Q. And you were aware of that fact?

A. Well there never was a question entered my mind; never has been in anything I was interested in that there could be anything wrong.

Q. Well you were aware of the fact that you didn't really know anything about its condition?

A. It never entered my mind in that way; I thought I did.

1417 Q. But you never made any investigation?

A. How could I make any?

Q. I am not asking you that.

A. I never did.

Q. Then you never could know of your own knowledge what its condition was.—You could know how much cash it had.

A. I could have counted the money, but that wouldn't mean anything.

Q. You could have looked over its Bills Receivable.

A. Why yes, I could have looked over its Bills Receivable and tell that they had eight hundred or two hundred thousand dollars, but that would be all.

Q. But you never did it?

A. No sir, I never did it.

Q. And yet you made these statements in which you stated there are certain amount- of liabilities and assets and cash.

A. I made those statements after the sworn statements of the officers.

Q. Absolutely on the statement of someone who handed you the statement.

A. That is very true.

Q. And you say you have never examined any book of the bank?

A. I never have.

Q. Isn't it true that you examined the Interest book?

A. That is not a book that needs any examination; that Interest book is always a book that just laid there that any officer or director or stockholder that went in there could look into and see what the earnings were; nothing else.

Q. Then you did examine that?

A. No sir, I didn't, because there it would show what the interest was for that day; it was just like the—I don't know what you call the book that you make the daily entry of that kind in lying
1418 on your desk and interest earnings would be \$208, and then there would be a line under that, and tomorrow it would be so much and a line under that,—just like a hotel register.

Q. You have examined that book?

A. Well not to examine it; that book was always there so that when you went into the office where Mosher was there, the book was there for anybody to look at, anybody that had the privilege of going into the office, but I never paid any attention to it, only just what it showed there day by day, the same as I would a hotel register to see what people were arriving.

Q. Didn't you testify in the case of Hayden against yourself and others that you had examined the interest book of the bank?

A. There is no testimony that would mean any more of an examination than I have testified to here, because that is all there was of it; you can call it an examination or inspection, or optical illusion if you want to, for that is what it seems to be.

Mr. ROSE: You think it showed earnings that came in from day to day.

A. That is the way it looked.

Q. In one of the questions you answered you spoke of your knowledge of directors' paper that was carried by the bank. Did I understand you to say you didn't know the bank was carrying any directors' paper?

A. Well I don't remember as to what I testified to.

Q. What are the facts?

A. I don't know that I ever said that I didn't know they had any; that might be qualified. Excess directors' paper you mean, or any at all?

1419 Q. Did you know that they carried any large amount of directors' paper?

A. No, I don't think I ever knew that they had any large amount; I would naturally know that they had some, because now and then I had a note of my own in there for a few dollars.

Q. What was the largest amount that you knew of them carrying as directors' paper?

A. I couldn't say as to that.

Q. You say you didn't know that either Mr. Mosher or Mr. Outcalt were borrowing from the bank?

A. I have no recollection of knowing that they were borrowing of the bank; those things, Mr. Thomas, are all things that didn't come under my notice in any way at all.

Q. I want to ask you if you didn't know that they were borrowing money of the bank?

A. Well I could hardly say that I didn't know that they borrowed money from the bank; I couldn't say that I knew that they did.

Q. Did you know that Mr. Holmes was borrowing money from the bank?

A. No, my guess would have been that Holmes never borrowed money from anybody, but he seems to have borrowed a great deal. Mr. Holmes was a very wealthy man.

Q. Did you ever know that Mr. Phillips ever borrowed any money?

A. No I have no recollection of knowing that any of them borrowed any money there.

Q. Did you know that Mr. Hamer ever borrowed any money there?

A. No I wouldn't suppose that he would; he was a very wealthy man.

Q. And Mr. Walsh, did you ever know of him borrowing 1420 any money from the bank?

A. No, I never did; he was considered a very wealthy man.

Q. And that is true of every one of the directors?

A. That they were wealthy?

Q. Yes sir.

A. Yes sir, I think with the exception of Phillips, they were all considered very wealthy men—so considered. Phillips was understood to have less money than the others that were in there, but the directory of the bank were all men that were understood to be possessed of much wealth.

Q. And you didn't know that any of the directors were borrowing money of the bank?

A. I have no recollection of any just now, Mr. Thomas, but I don't think that I knew that they were what you would call chronic borrowers or anything of that sort, if I ever knew anything about it.

Q. Did you ever hear of this concern that is referred to as the Western Manufacturing Company?

A. Yes sir; I knew there was a Western Manufacturing Company; I never knew there were two of them until after the bank failed.

Q. Did you know there was one that Mr. Mosher was connected with?

A. Yes sir, I knew Mr. Mosher was connected with one.

Q. Did you know there was any of the Western Manufacturing Company paper had been discounted by the Capital National Bank?

A. No, I never did.

Q. Did you know that it carried any of the paper of that company in its Bills Receivable?

A. Well I don't know that I would know definitely whether they did or did not. I have got to keep saying to you what I said before; we might have that in there and it wouldn't concern me at

1421 all because there were men there who were appointed to attend to those things and to look after the welfare of the bank, and with me everything ended there.

Q. Referring to those appointed to look after the concern, you mean the finance committee?

A. Yes, sir, the finance committee and the officers, and that committee was composed,—in the beginning, of Professor Stuart and Mr. Holmes, and later when Holmes died, Dr. Hamer succeeded him.

Q. When did Mr. Holmes die?

A. Well I think he died in 1891.

Q. Was it '90 or '91?

A. I think '91.

Q. Isn't it true, Mr. Thompson that the matter of carrying this Western Manufacturing Company paper was discussed at different times by the directors?

A. No, not to my recollection; never when I was there.

Q. Never with any of them?

A. No, I never discussed it with any of them; have no recollection of ever talking about any of the assets of the bank there except in reference to the Mosher and Stark business and the Small business, and that's about the limit of my knowledge.

Q. You mean the York county matter?

A. Yes sir, and then in the beginning when the Donnell, Lawson & Simpson business came up, when the Capital National Bank began.

Q. These York county loans are the ones you refer to as having been made in the name of E. W. Mosher, who loaned the money and took the notes of the borrowers as collateral?

A. Those are the ones I have reference to; the ones you went over earlier.

Q. Then as I understand, the notes of Ed Mosher were 1422 entered up on the books of the Capital National Bank as a part of its Bills Receivable, were they?

A. Well how they were carried I couldn't say. The arrangement there was as I have before told you, that the money when it was sent to Mosher up there was to be covered by a note from him that was to be endorsed by C. W. Mosher, and then as the money was loaned and paper taken they were collateral,—or whatever was taken, always paper of course—that was sent in to serve as collateral to the note of E. W. Mosher endorsed by C. W. Mosher. That was the instructions but what the fact was I couldn't tell because that gets beyond me again.

Q. That was the instructions of the board?

A. Yes sir, to the president of the bank.

Q. But you don't know in fact whether it was done in that way?

A. No sir, I don't know what was done.

Q. You made no further inquiry?

A. Well that is not a fair way to put it, because if it hadn't been done in that way the finance committee would see that it was reported.

Q. It all falls back on the finance committee?

A. Yes sir, that is what it would do.

Q. These loans that were made there were the means of the accumulation of a great deal of this real estate?

A. That's something I don't know anything about.

Q. Those notes that were taken from the borrower, the men who ultimately got the money, were they simply carried as collateral, or entered by the bank and carried as part of its Bills Receivable?

A. That I couldn't say. That question would come under the direction of the officers of the bank and what the discount committee would agree upon; I presume they would be carried as collateral.

1423 Q. Was that matter discussed by the directory?

A. No, I don't think there ever was any discussion of that. It was to go there to the bank to secure the note that was sent.

Q. Now this committee, Mr. Thompson, that you speak of,—they were a sort of a committee to examine into the paper of the bank were they?

A. Well they had authority and that was their direction and their office, to examine into everything in the bank; to know that it was run right; that was the duty of that committee.

Q. To run the bank?

A. In conjunction with the officers of the bank.

Q. Well you understand as a matter of fact that the directors are presumed to be the bank and to control the bank, do you not?

Q. Now you recall the matter of the Sherman county matter, or the Hogg matter coming up before the Board?

A. I don't remember anything about it.

Q. Don't you remember of testifying to that in your former testimony in this case?

A. I don't remember anything of it just now. Call my attention to it and I will tell you.

Q. Where the Capital National Bank made a loan and had some litigation over it.

A. I don't recall it at all.

Q. Now you say when the Capital National Bank became such in name that there was a discussion over the Donnell, Lawson & Simpson matter, was there?

A. Yes, sir.

1424 Q. And I think you said that Mosher and Outcalt were to take care of the matter and did it?

A. Well I said that at that meeting they said it didn't belong to the Capital National Bank, the new bank, and that it was a loss; that the bank had failed or something like that and that he and Outcalt would take care of it.

Q. And did they take care of it?

A. That comes again to the committee, because it was arranged that they should.

Q. Didn't you at the former trial of this case, state in substance this, that Mosher and Outcalt were to take care of that and that they did do it?

A. I think they did; I think they took care of that, and I never had any other knowledge of any condition there indicating that they

didn't, and I don't understand why the committee in charge of that wouldn't pay some attention to it, if the record here as I have read it of this last trial would show this fact to be a fact. Now that seems to have gone out of there entirely, as they said it should do, that is, it was taken away from the bank, and then later it appeared in there and I don't know anything about it beyond that.

Q. How about the matter of the Marsh paper. You learned that that Marsh paper was in the bank constantly from the time it was the Marsh National Bank until it failed as the Capital National Bank.

A. I didn't know anything about that. There you have got to call your officers to account again. It seems very strange that even though the immediate officers of the bank wanted to carry a thing for a period of years, that the committee who is placed there for that purpose—

Q. It was a matter of public notoriety that the Marsh companies had failed?

A. I never knew anything about that.

1425 A. (continued). When they failed as I understand it, I wasn't think- about people at home very much; I was tending to my railroad business.

Q. That was just about the time you became interested in the Capital National Bank?

A. When they failed? I don't know.

Q. Just immediately,—the year preceeding the change of the name.

A. I had no knowledge of that.

Q. You knew that prior to that it had been known as the Marsh National Bank?

A. Yes sir I knew that, but I never had any business with it.

Q. And you knew that about ten or eleven months before that it was known as Marsh Brothers, Mosher & Company?

A. Well I don't think I ever knew of that,—anything about that.

Q. You knew that Mr. Mosher and Outcalt had been doing a sort of a collection and banking business before they organized the Marsh National Bank, did you not?

A. Well now, I presume I knew it, but it would be like any other little concern there in Lincoln doing business that I might know of, and yet not know anything about.

Q. You were acquainted with both Mosher and Outcalt before you became interested in the Capital National Bank?

A. No sir; I think I knew Outcalt in a way, but again showing perhaps my weakness, and lack of going into things as maybe I sometimes should to protect myself, I never had any acquaintance with those men at all,—that is Mosher at all, and Outcalt I think I had simply known in a way for some little time before that, until Outcalt, I think it was,—it may have been Mosher, came down to my office in the railroad building and told me that they were
1426 going to increase the capital stock in the bank and change its name, and wanted me to take some stock, and after talking

the thing over with them I agreed to do it, and that is the way I went into the bank; I had no acquaintance before that with them, what you would call an acquaintance.

Q. How long did you live in Lincoln prior to that time?

A. I came back to Lincoln from Kansas,—the Sante Fe road—probably in November or December, 1878 and I had been there all the time, when I wasn't away from home, I wasn't like a resident would be, I was a railroad employee and away from home most of the time.

Q. How was it when you became superintendent?

A. I never had any business with anybody up-town in a business way until I went in that bank in 1884; that was the beginning as I remember it of everything of a business character in Lincoln, and then as time went on these other things came to me. Now when that was presented to me they told me who were going in the bank and the question of good faith never entered my mind as a matter of fact when I paid a premium and cash for the stock, and to do what I did I don't think my good faith could be questioned very much; I wouldn't be throwing money into a rat-hole, as that seemed to be, if I had known it.

Q. Do you remember a loan to a man by the name of J. W. Ferguson?

A. Yes sir, I remember Ferguson.

Q. Did you ever know of his dealings with the bank?

A. No sir, not with the bank; I knew of his dealings with me.

Q. You didn't know anything of the bank loaning him money?

A. No I didn't; I didn't know anything except in this way.

Now Mosher said to me one time in speaking of Ferguson said
1427 "You can do some business there and make you good big interest on your money if you have got some money you want to let him have." There was some little talk about it at that time and later Ferguson came down to Lincoln and I think I let him have ten thousand dollars, for which he was to pay me 12% interest. That is the only business I had with Ferguson, and it is the only knowledge I had of his doing business with the bank, except that Mosher told me he would give me good big interest if I would let him have the money, and I think I let him have ten thousand dollars at that time. I know I was beaten out of part of it and didn't get it at all.

Q. Now Mr. Thompson, this chattel mortgage that Mr. Mosher gave you on his household goods was given ostensibly to secure, I think, to secure some stock that Mr. Mosher held as trustee for you. Is that true?

A. Mosher was given to hold as trustee twenty shares of the stock of the bank for my little girl, and that is what that refers to, He was the trustee of it until the thing failed and when he saw the fix he was getting in at that time, he made that chattel mortgage, and gave as his reason for it to secure that trust.

Q. Well was Mr. Mosher liable to you for the amount of that stock, Mr. Thompson?

A. Well in a way he was. He accepted the trust, and agreed

that it should be held under the conditions,—those conditions I can't recite,—I don't know what they were. I never had the stock certificate, that was issued to cover that trust. There was a change in a certificate that I had as I remember it and these twenty shares put in his possession as trustee under some sort of an agreement, as to what he was to do with it, but I can't recall that.

Q. The chattel mortgage provides that he was to hold you harmless on account of this stock, and to pay your daughter \$200 a year until she arrived at the age of eighteen and at that time he was to return to you its par value of \$2,000 or the stock at your 1429 election. Was that the condition?

A. That probably would be something like the arrangement that we made. Mr. Marquette made that arrangement, I think. It was at the time I had some family trouble and the arrangement was made with Mr. Marquette; it wasn't anything that I made myself.

Q. The chattel mortgage wasn't made then?

A. No, the trust arrangement I am talking about.

Q. The chattel mortgage provided that he was to pay your daughter \$200 a year until she arrived at the age of eighteen and at the end of that time,—

A. Well I don't remember about that you know, and I didn't make that deal; it was made by my attorney who was Mr. T. M. Marquette, who is now dead. Now the conditions of that little trust I don't remember about at all.

Q. Well prior to it being transferred to Mr. Mosher you were the owner of that stock?

A. Yes, sir.

Q. And Mr. Mosher was merely to hold it in trust, and to pay your daughter the dividends from it, was he not?

A. Yes sir, that was the trust arrangement. My agreement was that until she reached a certain age she should have the earnings or the revenue or whatever you may call it as Marquette arranged it, from this stock, but it wasn't given to her or anybody else; it was simply placed there and taken from me during this period of time.

Q. Didn't you retain the ownership of the stock, you might say the reversion?

A. At the end of the period of time as I remember it that would have come to me, but the bank failed I think before that period was up. Mosher was obligated to return that to me at the end of that period of time, or its equivalent.

Q. And did you pay the assessment made by the receiver on that stock?

1429 A. No, I did not. I paid the assessment on the ten shares that I had; I paid \$1,000 on that.

Q. In your testimony at the former trial of this case did you not testify that you left Lincoln for Terre Haute, Indiana on Tuesday or Wednesday before the bank failed, or maybe a day or two earlier than that?

A. I think I wasn't very definite as to when I did leave; I couldn't quite remember when I did leave.

Q. Wasn't this question asked you at that time: "When did you leave for Terre Haute, Indiana?" To which you answered: "It was probably Tuesday or Wednesday before the bank failed, and may have been a day or two longer than that. Stull and I went there to inspect a gas plant there". Was that your testimony at that time?

A. I think it was.

Q. And during the progress of this trial you have read over your garnishment answer which was made by you in March, 1893, in which you stated it was Saturday afternoon, the 21st when you left for Terre Haute.

Q. And isn't it true, Mr. Thompson that that is the reason that you have testified at this trial that you don't remember when you left for Terre Haute?

A. No sir, that wouldn't be my reason for testifying any differently than what I remember. If I said the first time that I left on Saturday that was probably right, because that was soon after the failure of the bank, and to say ten or twelve years afterwards would be a different thing.

Q. The failure of the bank made quite an impression on your mind did it?

A. Well I would say Yes.

1430 Q. And do you think you could remember how long it was after you left Lincoln until you heard of the failure?

A. I know I heard of the failure in Terre Haute; I heard of it there, but that wouldn't fix the time I left Lincoln.

Q. Nor the time that had elapsed.

A. No.

Q. And isn't it true that at the former trial of this case you testified that the bill of sale from Mr. Outcalt to yourself wasn't known of by you, and wasn't received and you had no knowledge of it until you got back from Terre Haute?

A. I think that's true.

Q. But when you went over your answer in the garnishment matter you learned, during the progress of this trial, that you had there testified that it was delivered to you with the deeds prior to your arrival from Terre Haute?

A. Yes sir, for the reason that I had a talk with Mr. Mullen,—

Q. You are testifying in reference to what your Alter Ego remembered?

A. Yes sir, because he has always had the responsibility of my papers.

Q. And in position to take the blame for anything if it were necessary.

A. No. Mr. Mullen isn't a man that would take the blame for anything that he wasn't responsible for, and you know that and everybody that knows him knows that.

Q. Did you know that the Capital National Bank carried a daily

advertising card in the daily papers of Lincoln during its existence and while you were connected with it?

A. No sir; I would have no recollection as to that.

Q. You have no recollection of seeing any card in which they advertised the bank, giving the name of the directors, and the capital stock and surplus?

1431 A. I wouldn't say that I did or didn't; that would be a matter of advertising and I don't read the advertising very often.

Q. You are a reader of newspapers?

A. I am not a reader of advertisements in newspapers.

Q. And I don't suppose you ever noticed any of the cards in the newspapers?

A. No sir; I have no recollection of noticing any.

Q. And never remember of having noticed any of the published statements of the bank's condition?

A. I have no recollection about the matter.

Q. You don't look at advertising matter you say?

A. I do not; I don't have occasion to read advertisements; I usually know about what I want.

Q. Isn't it true that your eye will catch advertising matter, if you don't make a practice of reading it?

A. It is very likely.

Q. It is likely that you recall of reading advertisements of Peruna in the newspapers?

A. Those matters are all a matter of the general conduct of a bank; something I didn't have anything to do with, the placing of advertisements, and I would have no occasion for reading them.

Q. Now in your testimony at the former trial, you were asked, were you not, this question: "Did you take a mortgage from Mr. Mosher on or about the 27th day of December, 1892?" To which you answered as follows: "Now I will tell you about that. That was while I was in Terre Haute, Indiana, and while I was there it became evident that the bank was going to fail, and they took this chattel mortgage over and gave it to Mr. Mullen, my secre-

1432 tary, and I never knew anything about it until I came back."

A. Very likely I did.—If I understand your question right, then I answered wrong, because that would be impossible. If that testimony read that way it was a mis-statement as to dates; it couldn't have been otherwise,—the 27th of December.

Q. Isn't that mortgage of Mr. Mosher's dated December 27th, 1892?

A. That's very true, but it goes on to state, the question and answer as I understand it that when that mortgage was brought to me it became apparent the bank was going to fail. Is that what it says?

Q. I have read it just as your answer was.

A. Well that is an error of the month, if that is the way it reads. It couldn't have been any other way.

Q. At that same trial was this question asked you: "Mr. Outcault also gave you a bill of sale dated December 24th, 1892 on a lot of

personal property including some horses and timothy hay and oats and harness and horse boots and sulkies, and a lot of other stuff on a farm about five miles south of Lincoln?" To which you answered: "Yes sir, that was the same time when I was away and given to Mr. Mullen".

A. That is what I testified to at that time that they came in my absence. Mr. Mullen's recollection is that it came with the deed; Mr. Mullen probably had charge of those papers.

Q. And isn't it true that at that former trial you were being interrogated concerning certain real estate that -as conveyed to you in York and Hamilton counties, and you were asked this question: "Isn't that deed dated,—the deed to the north-west quarter of 24-9-6, isn't it dated December 27, 1892"? To which you answered "Yes sir it was, and I will tell you why; when Mullen came to have that recorded he found there was no date on it at all, and I remember now of his telling me that he put a date on there".

Did you so testify at that trial?

A. I remember that Mr. Mullen found a date—a vacant date line at the time he called my attention to those papers and I said I see no reason why he shouldn't fill a date in.

Q. And didn't you further testify in that same answer, "I don't know what date he put on, but there was a date filled in, because there was a date belonged there"?

A. I presume that I did; I should have told Mr. Mullen if he asked me the question, as he seems to have done, if there was no date there to fill it in. It would be immaterial as to what date was filled in I presume if it was nearly correct.

Q. And at that same trial were you not asked the following question by your counsel, Mr. Rose, "And these chattel mortgages Exhibits 1059 and 1060 executed one of them by Outcalt, and one of them by Mosher, you say were executed and left at your office without your knowledge at all". That wasn't answered. Then another question followed that "What is the fact about it?" To which you answered "They were both left in my office in my absence and without my knowledge and very much to my displeasure when I came home."

A. Yes sir, I covered that just as well as I can.

Q. Well you did so answer at that time?

A. I presume I did. That would have been my recollection because of the manner in which those things were handled; I wouldn't be certain now hether that bill of sale from Outcalt came when the deed came or whether it came later.

Q. I will ask you Mr. Thompson, if the instrument I hand you here is your testimony, subscribed by you in the case of Kent K. Hayden against yourself and others in the United States Circuit Court for the district of Nebraska?

A. Is it signed?

Q. I think it is.

1434 A. I presume it is. I would say it was my signature there.

Q. Examine it and satisfy yourself.

A. I think so, although it is not the way I usually write my name. I don't look at the matter there because there is too much of it.

Q. In that testimony or deposition of yours, and on page 7 thereof you purport to give the monthly balances and the notes of the Lincoln Gas Company in the Capital National Bank during the years 1891, 1892 and January 1893, do you not?

A. That is what the heading of it indicates.

Q. Do you recall it?

A. No, I have no recollection of it; that would have been made up by the secretary.

Q. It is incorporated in your deposition?

A. Very likely, but I didn't make it; Mr. Honeywell made that.

Q. And isn't it true, calling your attention to that statement, that it shows that on May 1st, 1891 the Gas company's credit on deposit in the Capital National Bank was \$10,532.48?

A. That is what it indicates there, yes sir. My memory of it is that the testimony of Mr. Honeywell here the other day as to the balance on that date shows something over ten thousand dollars; probably the same as this.

Q. Mr. Thompson, you remember of writing a letter to Mr. Mansfield, Mr. Mosher's father-in-law, about January 25th, 1893, do you?

A. I presume I did; I tried very hard to get Mr. Mansfield to save the situation there, and I presume I wrote him a letter; I know I went over there as much as two times, and maybe more.

Q. You made several trips back there?

A. I think I did; Mr. Whedon asked me to do it and I did do it.

1435 Q. And in that letter you said—among other things—"I regret exceedingly that I did not see you yesterday, but as soon as things straighten out a little, if you wish, I will come over to Peoria to see you"?

A. Well that would be just about in line with what is developed here,—that is, I telegraphed him in coming west.

Q. And in that letter did you not state as follows, referring to the Farmers & Merchants Insurance Company "At the end of each year I cull out everything that I consider bad so that we are always in first class condition"?

A. Well if I had said that I would have stated facts, because that is the system that I always apply there in the conduct of that company, as I have all of the companies I have been in immediate charge of. We carry no "dead dogs" in our accounts. The reason for that would have been that if Mr. Mansfield had asked me about the company,—he had \$25,000 of that stock,—that I think was stock that Mosher had put up with him as collateral for some purpose,—he had borrowed considerable money from Mr. Mansfield.

Q. Now you have testified to a ten thousand dollar credit to the account of the Gas company which was being carried in the name of R. C. Outcault treasurer. I believe you said you went into the bank

on the 30th day of April, 1891 and got a credit of \$10,000 and on the day following you took a note of the Gas company in.

A. When have I testified as to that?

Q. Haven't you testified to that?

A. I can say I didn't testify to that because that is not the manner in which that was done. That credit is a credit for a note that was given the Cadiz, Ohio, bank, and the record as shown by Mr.

Honeywell the other day and as looked up by Mr. Rose, 1436 and Mr. Mullen, shows that was taken into our account on the first day of May.

Q. Didn't you testify in reference to that same transaction in the Hayden case; do you recall of testifying about that?

A. No, I have no recollection of having done it.

Q. The testimony in that case which I hand you,—does that bear your signature?

A. Yes sir, that is my signature.

Q. And at that time did you not state "On April 30th we received credit for \$10,000 at the Capital National Bank and on the next morning I gave this note to cover that credit", and the question was asked "Who signed the note" and you answered "I signed it for the Lincoln Gas Company, by D. E. Thompson, its president". Question: "And has the signature, or part of it been torn off?" Answer: "The signature was torn off when the note was returned paid". Question: "Was there any discount paid by the Lincoln Gas Company on this note, if so, just explain that transaction and how and when it was". Answer: "When we took credit for ten thousand dollars, the next morning after the credit was given us I took this note to the bank for re-discount and our account stood credited with \$10,000 on account of this note until the note was sent to Cadiz, Ohio and discounted there, and when the rate of interest that bank charged us on this note was reported back to the Capital National Bank our account was charged with that amount, which was \$375 interest on it for six months." Question: "That was on what date?" Answer: "As soon as the returns came from there, probably four or five days". Now were those questions asked you?

A. That would be when the interest was charged.

Q. The \$375.

A. Yes, sir.

1437 Q. Do you remember of so testifying in that case?

A. No, I don't remember; but, that no doubt is true, because that is substantially the transaction there; the credit was for a note of ten thousand dollars; the interest was charged when the interest was fixed in Cadiz, Ohio.

Q. Now I want to ask you, Mr. Thompson, if at that same trial the following question was asked you: "I notice that on January 1st, 1886 and January 1st of each succeeding year the deposit seems to be larger than at other times. Will you explain why that is, or the reason for it?" You answered: "The explanation for that is this, in making our annual statements to the State Auditor and to the public, we like to show a fair cash balance, and in order to do that we deposit in the bank, in which we are doing business, some of

our best securities, and take credit for them, and add this credit to our running account, whatever it may be, and in that way show a larger cash balance on the first of January than we would care to carry throughout the year; in other words our cash balance would be enough to take care of our running expenses and pay any losses likely to occur; our assets are always such that if we want to realize money quickly we may do so, but we keep our account pretty closely in interest bearing investments, in order to get our interest and not lose it, as we would if carrying it in the bank."

A. This has reference to the insurance company?

Q. In dealing with the bank.

A. Well this question as you have read it over is just as good as my answer; it is just as good a way as I can put it.

Mr. NORVAL: The question is whether you so testified.

A. I no doubt did.

1438 Q. To what institution did that refer, the Farmers & Merchants Insurance Company?

A. That referred to the Farmers & Merchants Insurance Company.

Q. Are you acquainted with Mr. Dobson, the cashier of the First Bank of Ulysses?

A. I think not.

Q. Don't ever remember of having met him?

A. I don't know; possibly I may have met him, but at this moment I don't recall him.

Q. George Dobson of Ulysses.

A. I don't at this time recall who he is.

Q. I will ask you if you recall having had a conversation with him in the Capital National Bank during the month of January 1893?

A. No sir, I have no recollection of any conversation with him, not remembering him.

Q. I will ask you if during the month of January, 1893, Mr. Dobson was not in the Capital National Bank, in the portion of the room occupied by Mr. Mosher, at which time there were present Mr. Mosher and yourself and Mr. Dobson, and in that conversation you were introduced, I think, to Mr. Dobson, or met him, and Mr. Mosher referred to you as one of the principal stockholders of the Capital National Bank, and a director, and in the course of the conversation between you and Mr. Dobson you talked concerning the bank of which Mr. Dobson was cashier being a correspondent and depositor in the Capital National Bank, and told him at that time that the Capital National Bank was as good as any in the state, and that you were pleased that he was doing business with that bank, or words to that effect, or in substance.

1439 A. I have no recollection of any conversation of that kind; it is hardly a likely conversation, because at that time my interests were practically all in the American Exchange Bank, which was a competitor of the Capital National Bank, and Mr. Mosher would hardly have said in my presence that I was one of the principal stockholders, in view of the fact that I had only ten shares, and

I would hardly have made any declaration, as you say I made, as to the value of the Capital National Bank in view of the fact that all of my interests were elsewhere.

Q. I don't know that you were asked to state specifically with reference to the various statements of the condition of the Capital National Bank, excepting the one of December, 1886, and I want to ask you this: Did you sign a statement of the condition of the Capital National Bank purporting to give its condition under the date of August 1st, 1887?

A. I couldn't answer specifically; I would say this, that any time that ever I attended a meeting of the Capital National Bank, if a statement was sent me later to sign I should have signed it, but I do not remember any of the dates that I signed.

Q. Did you sign one under date of October 2nd, 1890?

A. I would have to give the same answer as to that.

Q. And one of December 19th, 1890?

A. And the same answer as to that.

Q. And did you sign one under date of July 9th, 1891?

A. I would have to give the same answer as to that.

Q. And in the testimony, which I have just shown you, which was taken in the same case of Hayden, Receiver, against yourself and others, did you not there admit that you did sign each of those reports to which I have called your attention?

A. If I knew at that time I had signed them, I should have admitted it.

1440 Q. Is it true that you did at that time admit having signed each of those reports?

A. I don't remember as to that?

Q. I call your attention to question 75 as shown there.

A. This question is "How many", presumably meaning how many did I sign, and I say four, one under date of August 9, one under date of October 2, 1890, one under date of December 19th, 1890 and one under date of July 9, 1891.

Q. That is correct then is it?

A. It probably was as I remembered it at that time. If I was at these meetings and asked to attest these reports when they were brought to me I should have signed them.

Q. There was no meeting of the directors on December 19th, was there, Mr. Thompson?

A. December 19th of what year?

Q. Of any year.

A. Oh, I don't know.

Q. How near that?

A. I can't tell you that.

Q. And there was no meeting at any time on October 2 of any year was there?

A. I couldn't answer as to that; my memory is hardly good enough to carry me back to dates and things of that sort eighteen years.

Q. The only meetings that you attended was at dividend declar-

ing times, or did you attend other meetings than at the dividend declaring time?

A. I never so far as I remember, attended any called meeting while I was in Lincoln, nor missed any of the regular meetings, when I was in Lincoln. A man in business in Lincoln would be there the most of the time, but I was in Lincoln comparatively little; my business was of a character that took me away from home most of the time.

1441 Q. In addition to the various interests and matters of which you have had charge, and properties under your control, I think I omitted to ask you if you are not the owner of the Lincoln Hotel and the Capital Hotel at Lincoln, and manage those?

A. No, I have nothing to do with the management of them; I am interested in them; I am a stockholder in them.

Q. You are the largest stockholder in those enterprises, and own practically all of the stock?

Mr. ROSE: That is objected to as immaterial.

Mr. ROSE: Did you have any property of that kind when this bank failed, or for years afterwards?

A. Oh, no, the hotels referred to were acquired since my appointment to Brazil,—on one of my trips home. The Lincoln hotel was in trouble. The Omaha National Bank held a claim against Merkel, who was then operating it, and they came to Mr. Stevenson or Mr. Mullen or both of them with a proposition to buy Merkel's claim, and that was the beginning of the matter that put the Lincoln and the Capital hotels in our hands.

Mr. THOMAS: That is all.

Redirect examination.

By Mr. ROSE:

Q. There may be a question or two that I don't think I asked you formerly, that may not be strictly redirect examination. When you signed the four reports during the existence of that bank, to which attention has been challenged on cross examination, or rather when you attested them, you may state whether or not you believed the statements contained in them to be true?

A. Yes, sir, indeed I did.

1442 Q. Now at the meeting of the directors what means did you employ if any, to ascertain the condition of the bank?

A. Well at every meeting at which I was present, a general statement was made by the president of the situation of the bank, and there was always a report of the finance committee of the condition as they found it, and that was the only information I had of the condition of the bank.

The COURT: That was all covered, Mr. Rose.

Q. You spoke of having knowledge of one Western Manufacturing Company. Who was manager of that?

A. D. B. Welch.

Q. What was its business?

A. Manufacturing implements, and I think barrels, out at the penitentiary.

Q. You spoke of Mosher being interested in it; was that the company that Mosher was interested in?

A. Yes, sir, that is all I know of.

Q. Did you ever have any knowledge of Mosher's embarking in the enterprise, the Western Manufacturing Company, on a capital of \$25,000 borrowed from the Capital National Bank?

A. No, sir, I had no knowledge of it.

Q. Did you ever know of such a purported institution during the existence of the bank?

A. I never did.

Q. Respecting the order of Mr. Mosher, that Mr. Mosher gave you for dividends on stock in the Lincoln Gas Company, standing in your name. Was that transaction before or after the failure of the Capital National Bank?

A. You say standing in my name?

Q. Did Mosher give you an order for dividends?

1443 A. Standing in my name. You said standing in my name.

Q. Well I meant standing in Mosher's name.

A. That was after the failure of the bank.

Q. Now that is the fact Mr. Thompson, as to whether any of the shares of stock in the Gas company, the dividends of which were involved in the order that you received from Mosher, were actually at that time owned by Mr. Mosher?

A. Well Mosher's claim was that those certificates of stock belonged to him, and it was on that line of reasoning I presume that he gave the order for the dividends, but later a decision of the Supreme Court brought by some one of the holders of one of those certificates, decided that the stock belonged to the people in whose hands it was held as collateral and the dividends belonged with the stock.

Q. Wasn't that held in the case about which you were interrogated of Galva Illinois bank?

A. Yes sir, that is the case.

Q. So in respect to the legal opinion that you expressed about those funds being subject to garnishment as Mosher's funds, you were mistaken about that?

A. Well in saying that they were subject to garnishment,—what I would mean, not being a lawyer, that they were there subject to process; my idea was that they belonged to the man in whose name they stood, but the court decided otherwise,—that they belonged to the man who held the stock.

Q. As collateral?

A. As collateral, yes sir; that is the Supreme Court of this state that rendered that decision.

Q. So you were not held in that case for any portion of those dividends?

A. No, sir, I was not.

Q. During the existence of this bank, did you have any knowledge that the Jones National Bank was a depositor in the Capital National Bank?

1444 A. No sir, I had not.

Q. During the existence of this bank did you have any knowledge that the Bank of Staplehurst was a depositor?

A. No, sir. I hadn't even any knowledge that there was a Bank of Staplehurst.

Q. Now in addition to the interests that you had at risk at the time of the failure of the bank, were you interested, directly or indirectly, in the deposit of the funds of the city of Lincoln, in that bank? If so how?

A. I was one of the signers on the bond, at that time, of the city treasurer.

Q. Did the city treasurer have a deposit?

A. He did.

Q. Who was the city treasurer?

— Mr. E. B. Stephenson.

Q. Did you have any liability fall on you on account of that?

A. I was one of a number that made up a deficit there that the treasurer was unable to take care of himself.

Q. After this bank failure what was your opinion and belief as to the value of its assets, and its ability to pay out the depositors immediately after it failed?

1445 A. I believed that the bank would almost liquidate the claims against it, from all the information I had.

—and in talking with Mr. Macfarland when he was temporary receiver there, he was of the same opinion.

Q. Did you take any action at that time in the matter of disposing of any claims that you controlled in that bank?

A. The treasurer Stephenson, had something like twenty thousand dollars in there, as I remember it, and he came to me and said that he had been offered by Mr.——

A.—N. C. Brock of Lincoln had offered him seventy five cents on the dollar for his claim, and asked what I thought he should do about accepting it, and I said to him I didn't think he ought to do it; he went away and came again; he came to me several times,—probably three or four—each time rather pressing me to say to him that it would be best that he accept this seventy five cents on the dollar that Mr. Brock had offered him; Mr. Brock had bought some other claims there and paid seventy five cents for them, and each time he came I insisted in my talks to Mr. Stephenson that it would be a loss to him if he accepted that, and that he should stand for what the bank would give him. The outcome of it was that instead of getting seventy five cents, he got seventeen cents and I got the privilege of paying something

1446 on the bond.

Q. In case the claim had been sold for 75c on the dollar had Mr. Stephenson made arrangements by which he could

discharge his whole liability and not let any loss fall on you as bondsman; had that subject been mentioned?

A. Mr. Stephenson said in his conversations with me that if he accepted the 75c he could clear his obligation with the city,—

—that with his own personal funds seventy five cents on the dollar would give him enough so he could take care of the obligation.

The Court: Why did you stand against that?

A. Mr. Stephenson was a friend of mine, and I didn't like to see him lose any money; Mr. Stephenson has been a friend of mine for many years and I thought in advising him as I did that I was advising him to the end of getting the best results for himself.

Q. Now in respect to the chattel mortgage of Mosher on his household goods to secure the trust obligation, on account of the funds placed with him for the use of your daughter. Did you ever make any claim or exercise any right whatever, under that mortgage?

A. No, I never did.

Q. Did you ever have any part in its execution or record?

A. I did not.

1447 Q. Or filing?

A. I did not.

Q. Did you know of its existence at the time you were in Terre Haute, Indiana, when the bank failed?

A. No, I did not.

Q. Now in respect to the possibility of your looking over the Bills Receivable of the Capital National Bank, I want to ask you, if at any time during the existence of the bank you were acquainted with the signature of F. S. Johnson & Co., or of F. S. Johnson of that firm, of Milford?

A. No sir.

Q. Were you acquainted with the signature of the officers, if any, who had authority to execute promissory notes of the First National Bank of Hastings?

A. No sir, I was not.

Q. Were you acquainted with the signatures of the officers if any, who had authority to execute the promissory notes of the First National Bank of Kearney?

A. I was not.

Q. Were you qualified to go over the Bills Receivable and ascertain whether the notes were genuine or whether they contained any forged instruments?

A. No, I couldn't have known anything of it.

Q. As to the genuineness of the paper.

A. No sir, I couldn't.

Q. Now if I recall correctly the last report that you ever attested on the condition of the Capital National Bank, was of its condition on July 9th, 1891?

A. The reports will show for themselves better than a man's memory, that is, if they're here, but I believe that's true.

Q. You had nothing to do with any report subsequent to that date?

1448 A. I think not.

Q. Up to the 18th day of July, 1891, when the official report of the bank's condition at the close of business on July 9th, 1891, purports to have been executed, had your attention ever been called to any communication of any sort touching the condition of the bank, received from the Comptroller of the Currency?

A. No sir. So far as I recall nothing of that kind ever came to my attention.

Q. The letter which came after that calling attention to the Small and some other matters—two of them which may have come to your attention—only one of them in the record, were of a date long subsequent to that?

A. Yes sir, they were.

Q. When you spoke of the date of the chattel mortgage evidently being a month wrong,—or the bill of sale,—did you know anything about the Mosher chattel mortgage being dated December 27th, 1892, or of any reason why it should bear that date?

A. The Mosher?

Q. The Mosher chattel mortgage on his little animal cage and his boys' pet rabbits.

A. I never knew anything about that as I have testified.

Q. Did you ever make any request for that security?

A. No sir.

Q. Did you ever know anything of the execution of that and delivery to Mr. Mullen?

A. No sir, it was a source of extreme torment to me, and I expressed myself pretty severely to Mr. Mullen when he told me he had recorded it, and I said I wasn't in the chattel mortgage business.

Q. So the matter of whether it was ante-dated, or anything of that sort you would not have any knowledge of?

A. No sir, I wouldn't.

1449 Q. And you never claimed or expected any benefits under it?

A. No sir, I never did; never exercised it in any way, or had anything to do with.

Mr. ROSE: That is all.

Recross-examination.

By Mr. THOMAS:

Q. But Mr. Thompson you were in the chattel mortgage business with Mr. Outcalt were you not?

A. I don't think I would call it that.

Q. Your bill of sale was merely a mortgage?

A. The bill of sale for the equipment that belonged on that farm, as I said to you, *as I said to you* before, was just about as much a part of that farm as your clothes are of you.

Q. Just answer me direct. That bill of sale was merely given you as security; it wasn't an outright sale?

A. That is true.

Q. Then it was in fact a chattel mortgage, was it not?

Q. And the property that was described in that bill of sale was sold by you,—foreclosed and sold and the proceeds, after paying a lot of expenses, applied on your note from Outcalt and Mosher?

A. The property that was included in that bill of sale; I don't remember that it was foreclosed; it was sold in this way. The horses,—I kept them there and they were depreciating in value and costing a lot to keep them, and I think a car load of them was sent to South Omaha and sold to the late Senator Hayward and C. E. Cotton of Syracuse, and the proceeds were credited on my note.

Q. The net proceeds were credited on your note.

A. Yes, sir.

1450 Q. Now referring to these dividends which Mosher placed in your custody; did I understand you to say that the court held that the stock upon which those dividends had accrued did not belong to Mosher?

A. That was the decision of the Supreme Court, yes sir.

Q. Now you say you wouldn't have recognized, or known the signature of the Johnson note if you had seen it?

A. I never had known Mr. Johnson's signature.

Q. Nor would you have known if the signatures to the note of the Hastings or the Kearney bank were the genuine signature of the proper officers?

A. No sir, I never had any way of knowing the signatures of those men.

Q. But you would have known the signature of C. W. Mosher to notes in the bank?

A. Yes, sir.

Q. And you would have known the signature of Mr. Outcalt to notes in the bank?

A. Yes, sir.

Q. And if you had seen notes there executed by Marsh Brothers, or Marsh Binder Company, you would have known that?

A. Yes, sir.

Q. And if you had seen notes in there signed by Donnell, Lawson & Simpson, you would have known something about that?

A. I wouldn't have known their signatures; I would have known what they purported to be; I would have known that they purported to be Donnell, Lawson & Simpson notes.

Q. And you knew that they had failed?

A. I knew that at the time of the organization of the Capital National Bank; that was a subject of discussion.

Q. You knew one E. Hurlbut Jr. Was he an employe of the bank and around there all the time?

A. No, I don't think he was around there, what you would
1451 call very much of the time. I always supposed he was collection agent of the manufacturing company, is what I thought his business was.

Q. And if you had seen notes in the bank executed Western

Manufacturing Company, by E. Hurlbut Jr., Manager, you would have known that?

A. Yes, I would have known how they were signed?

Q. And you would have known that they were not signed by the one of which M. D. Welch was manager.

A. Yes sir, I would have known that, because the company of which Welch was manager would probably have been signed by Welch.

Mr. THOMAS: That is all.

Redirect examination.

By Mr. ROSE:

Q. In reference to the taking of the notes of Donnell, Lawson & Simpson out of the assets of the bank that were transferred to the Capital National Bank from the Marsh National Bank, did you at any time receive any information other than what you have stated here as to the character of the securities Mosher and Outcalt alleged to have substituted for them?

A. At the time of the organization, if you may call it that, of the Capital National Bank, as I have repeatedly said before, the Donnell, Lawson & Simpson claim was one that was settled in this way: That that bank had failed, as was said at the time, before the Capital National Bank became a fact, and at that time it was admitted by Mosher that he and Outcalt were responsible for it, and they said they would be responsible for it, and that they had 1452 some bonds and some land,—I think Kansas City water bonds, and it seems to me that they had some land that Donnell, Lawson & Simpson had given them for collateral to cover the claim, and that is the last that ever I knew about it. I never knew anything about it; nothing came to my attention after that; the finance committee never mentioned anything, and I never heard anything after that. It was very much of a surprise to me to find that that thing got back in the bank again after that; I never knew it.

Mr. ROSE: That is all.

Witness D. E. Thompson excused.

1453 Mr. J. K. HONEYWELL, called as a witness on behalf of the Defendants, and being first duly sworn testified as follows, to wit:

Direct examination.

By Mr. ROSE:

Q. Where do you live and what is your business?

A. I live in Lincoln, Nebraska; not much of any business; run a little dairy part of the time.

Q. What was your business in April and May, 1891?

A. I was employed by the Gas company.

Q. The Lincoln Gas Company?

A. Yes sir, at that time I was secretary.

Q. Did you devote your time exclusively or nearly so to the business of the company?

A. Yes sir.

Q. Who run the company's public office; who was in immediate and direct charge of the company's public office?

A. In the collections, and so forth?

Q. Yes sir.

A. I was, and made out the bills.

Q. Who attended to the keeping of the company's books and records and deposits and withdrawals of its funds from the bank?

A. I did.

Q. Where was the company's deposit account kept at that time and what name was it kept under?

A. In the Capital National Bank, by the name of R. C. Outcalt treasurer.

Q. Did Mr. Outcalt have any control over the deposits and withdrawals in that account?

A. Nothing with the withdrawals, or the deposits either.

Q. Did he have authority to sign checks?

A. I couldn't answer that, but he never did.

1454 Q. Did the printed forms of the check in use have any place for the signature of the treasurer, or was it printed on the check?

A. I think it was printed on the check.

Q. Who in the ordinary course of business signed and issued the checks?

A. I did.

Q. Did you keep a complete set of books for the company?

A. Yes, sir.

Q. What books did they consist of?

A. Cash book, journal and ledger.

Q. Did you have a ledger account with the Capital National Bank?

A. Yes, sir.

Q. That is kept on the books of account of the Lincoln Gas Company?

A. Yes, sir.

Q. Are the books here produced being the Cash book "B", Journal "B" and Ledger "B" the original books of account of the Lincoln Gas Company in use in April and May, 1891?

A. Yes, sir.

Q. In whose handwriting are the entries in these books if you know?

A. Mine.

Q. Were they made at or about the date of the transactions therein recorded?

A. Yes, sir.

Q. Were the entries, within your knowledge, correct?

A. Yes sir, I used to take off a trial balance every month. Sometimes I had trouble, but I always get through.

1455 Q. The transactions were always correctly entered by yourself and in your own hand?

A. Yes, sir.

Q. And they were transactions of which you had personal knowledge at the time?

A. Yes, sir.

Q. Do those books show continuous dealings of the company with persons generally?

A. Yes sir, but not with the consumers or anything of that kind, or total amount of cash collected and paid out.

Q. Of course these are not the summarized records at all.

A. No.

Q. They are the general books of account?

A. Yes sir.

Q. Show the money borrowed and paid for construction, and the dealings generally with persons other than the mere patrons of the company?

A. Yes sir.

Q. You may refer to the books and state what was the balance of your deposit account with the Capital National Bank as shown by these books of the Gas Company, on the morning of May 1st, 1891.

A. My balance was \$10,532.49.

Q. On that day was there a deposit of \$10,000,—or was there an item of \$10,000 charged by the Gas Company to the Capital National Bank?

A. Yes, sir.

Q. Was there any such item charged against the Capital National Bank on the date of April 30th, the previous day, on your

1456 books?

A. No sir.

Q. Now have you traced through the Journal and records of the Gas company sufficiently so that you can ascertain the source of that \$10,000 deposit of May 1st, 1891?

A. Where it came from?

Q. Yes, sir.

A. It was the amount borrowed from the Cadiz, Ohio, bank.

Q. On what?

A. On a six months note.

Q. What bank of Cadiz?

A. The First National Bank.

Q. Do you know through what source that particular note was negotiated?

A. Through either Mr. Thompson, or Mr. Mosher. Of course I couldn't tell that. That part of it, the borrowing of money at that time I had nothing to do with, except to keep the books.

Q. Where notes were forwarded for discount through the Capital National Bank, what would be the course of the transaction, and what would be the authority for you to charge the item up against the Capital National Bank?

Q. You had a record of all that was done in that respect?

A. Yes, sir, all the cash business I had charge of.

The COURT: The objection is overruled.
Plaintiffs except.

A. When they got the money they would notify me.

Q. And then on receiving advice of the credit what would you do?

A. Deposit it in the bank.

Q. Or charge it to them, if they had received it?

A. Yes, sir, charge it to the bank.

1457 Q. Now have you examined the deposit account of the company in the books of the Capital National Bank, as exhibits here in the two books Exhibit X-52 and Exhibit X-54, so as to be able to reconcile your credits with the credits shown in the deposit account on the books of the Capital National Bank?

A. I never examined those books much.

Q. You examined them here this morning?

A. Just a little bit this morning, yes, sir.

Q. Can you find credit for that same item on the deposit account of the Capital National Bank?

A. There seems to be a credit of \$10,000.

Q. Under what date?

A. April 30th.

A. And in the same account under date of May 1, 1891, do you find any credit for that item?

A. Don't find any; there's none there.

Q. Now I notice in your own book under the date of May 1st, there is another charge to the Capital National Bank of an item of \$5,000.

A. Yes, sir.

Q. Can you identify what that was from those books?

A. Nebraska City National Bank.

Q. What was the source of that?

A. That came from Nebraska City; borrowed of the Merchants National Bank of Nebraska City on six months' time.

Q. On what?

A. On a note.

Q. For \$5,000?

A. Yes, sir.

Q. Was there any discount, or interest credited against that on your books so as to show what the net balance of that credit would be, after offsetting the discount or interest?

1458 A. Yes, sir, \$141.94.

Q. Now have you got the item?

A. Yes, sir.

Q. Were you in error as to the—you were in error were you as to the particular item?

A. Yes, sir, in regard to where it came from. It came from Farce & Leach.

Q. It was a four months' note was it?

A. A four months' note, yes, sir.

Q. What was the discount on that?

A. \$141.94.

Q. You may state whether your credited that discount against the charge in the Capital National Bank account?

A. Yes, sir.

Q. And what would be the difference?

A. \$4,858.06.

Q. Now in order to reconcile that, at or about that time, see whether you find any corresponding credit in the deposit account on the books of the Capital National Bank here.

A. Yes, sir, there is a credit here of \$4,858.06.

Q. Under what date is it entered on the books of the Capital National Bank?

A. May 2nd.

Q. Now under what date did that transaction actually go upon the ledger of the books of the Gas company?

A. April 27th.

Q. No, on the ledger. When was it charged on the ledger to the Capital National Bank. You will have to get your ledger account and see under what date you posted it.

A. May 1st.

Q. And what were the items in your ledger posting under which you posted that item,—what were the items of charge and credit?

1459 A. Charged with \$5,000 and they're credited with \$141.94.

Q. Does that reconcile your credits,—did that reconcile the two books in respect to those credits?

A. Yes, sir.

Q. You may state whether the charge on your books of the \$10,000 to the Capital National Bank referred to, was for a bona fide deposit in that bank?

A. Yes, sir.

Q. And was the note which was the source of that credit afterwards paid by your company?

A. Yes, sir.

Q. When was it paid?

A. It was paid on November 2nd, 1891.

Q. Have you any memoranda that will identify the particular manner in which it was paid?

A. Paid by check.

Q. Drawn in favor of whom? You have your stub here so you can identify it?

A. Yes, sir, there it is right there.

Q. To whom did you draw the check—through whom was it paid?

A. The Capital National Bank.

Q. You have the stub here for inspection,—you don't have the original check?

A. I don't know whether it is or not.

Q. Now I will hadn you Exhibit "as" and ask you if that bears your signature?

A. Yes, sir.

Q. Does that show the printed form of check that was in use in the account with the Capital National Bank?

A. Yes, sir.

1460 Q. Is that the same check form that was in use in 1891?
A. Well I would think so, unless there was some checks printed for '91, but ordinarily I think it was the same thing.

Q. Does that show the form in which the checks were signed?

A. Yes, sir.

Q. And shows the form in which it bore the name of the treasurer?

A. Yes, sir.

Q. That indicates the method of withdrawals from that account?

A. Yes, sir.

Q. Did any check actually bear the signature of R. C. Outcalt for any withdrawals so far as you know?

A. Never.

Mr. ROSE: We offer that in evidence, merely to illustrate the form of check.

Mr. THOMAS: We object to it for the same reason that counsel on the other side objected to the card we offered yesterday merely to show the form.

Objection overruled.

Plaintiffs except.

Exhibit offered is received in evidence.

The Lincoln Gas Company.

No. 5256.

LINCOLN, NEB., Jan. 20, 1893.

Pay to the order of B. & M. Freight \$80.70/100, Eighty 70/100 Dollars.

To Capital Nat'l Bank, Lincoln, Neb.

R. S. OUTCALT, *Treasurer*.

J. K. HONEYWELL,

Secretary.

Exhibit as.

Endorsed: For Deposit in First National Bank, Lincoln, Neb. For Credit of C. B. & Q. R. R. Co. Grantee and Assignee of The B. & M. R. R. in Neb. M. Scott, Agent.

[Stamp:] (1. Paid through Lincoln Clearing House Jan. 21, 1893, to First National Bank.)

1461 Q. And so long as Mr. Thompson was president of that company did anybody else actually make withdrawals of funds from the Capital National Bank?

A. No, sir.

Q. Did you have charge of the pass book of the Gas company at the time the bank closed?

A. Yes, sir.

Q. Do you have the pass book that was used at the suspension of that bank?

A. Yes, sir.

Q. Did you have it balanced under the date of the suspension by the persons in charge of the bank?

A. I think the Receiver done that; McFarland or some of his clerks.

Q. Is this the original pass book that was used at the close of the bank?

A. Yes, sir.

Q. What was the last deposit in that bank?

A. On the 21st we deposited \$488.85, that was the last; it seems to me that was on Saturday before the bank closed; that is my recollection of it.

Q. The 21st.—was there any deposit there on the 19th?

A. Yes, sir.

Q. What was the deposit on the 19th?

A. \$1,452.53.

Q. Was there any deposit there on the 17th of January, 1893?

A. Yes, sir, \$1,292.99.

Q. Then in closing out the account did you charge to the Capital National Bank the outstanding checks that were returned?

A. Yes, sir.

1462 Q. And what was the balance of your ledger account against the Capital National Bank when you included those items that had been returned?

A. \$13,520.82.

Q. Did you credit up some items that you had previously charged in your book, after that, or not?

A. You mean where people got scared and brought their checks in?

Q. Yes, sir.

A. Yes, sir, there seems to be two accounts of that kind. \$36.30, and the other for \$9.00.

Q. Does that make a little variance between your account at the close of the month and theirs on January 23rd?

A. Yes, sir, it would make \$45.00.

Mr. ROSE: That is all.

Cross-examination.

By Mr. THOMAS:

Q. You have no personal knowledge as to how that account of the Gas company was carried on the books of the Capital National Bank?

A. No, sir, I had nothing to do with their books.

Q. And you don't know how it was carried there?

A. No, except in the name of Outcalt as treasurer I think.

Q. What makes you think that?

A. Because it was on the pass book, and I am not sure but what he made that out; I am not positive of it.

Q. All the checks that were issued for disbursements on account of the Gas company were issued by you?

A. Yes, sir, with a few exceptions, when I was away.

Q. Aside from that you always attended to that?

A. Yes, sir, every one; I don't think there is a scratch in that book that I didn't put in.

1463 Q. You made all the collections?

A. I had charge of them.

Q. You made the deposits in the bank?

A. Yes, sir.

Q. And bills and things of that kind you paid by these checks?

A. Checks, or cash, whichever happened to be convenient; mostly checks.

Q. Those checks were not signed by Mr. Thompson?

A. No, sir.

Q. None ever signed by Mr. Thompson?

A. Only what he issued himself.

Q. But those were very few and at long intervals?

A. I don't remember but one space when he done that, and that must have been at the end of the month and there wouldn't be much to pay anyhow. I remember of being in Colorado at one time and Homer had charge of the office—that's my son—and I think there were some bills paid. There may have been other occasions, but I have no recollection of them.

Q. You were quite a heavy stockholder in the Gas company yourself?

A. Oh some.

Q. About how much stock had you in the Gas company at this time?

A. Well I think I had a couple of hundred shares at the time we sold out; possibly more than that,—not much though. I can't remember distinctly, but I had some from 1890, I guess, somewhere along in there.

Q. And of course you don't know of your own knowledge just what was done with that account on the books of the Capital National Bank?

A. No, I had nothing to do with that, except what I saw there this morning.

1464 Q. And Mr. Outcalt was treasurer of the company during these periods to which you have testified?

A. Yes, sir.

Q. And if any entries were made on the books of the Capital National Bank you wouldn't necessarily know that,—in fact you wouldn't know it at all unless you examined the books of the Capital National Bank?

A. Yes sir, and I never examined them until this morning.

Q. When you made a loan of the Capital National Bank, how would you do that,—you would execute a note?

A. When I would make a loan?

Q. Yes sir,—I mean the company.

A. Credit bills payable and charge the bank.

Q. That is you would make out a note and take it over to the bank?

A. No, I never made the note out; had nothing to do with that part of it at all.

Q. I mean the note was made out anyway, and you took the note to the bank?

A. No, they attended to that themselves.

Q. Who would?

A. Either Mr. Thompson or Mr. Mosher. I think mostly Mr. Mosher.

Q. Was Mosher also a stockholder in the Gas company?

A. Yes, sir.

Q. Pretty heavy stockholder?

A. Pretty heavy.

Q. About how much stock had he?

A. Oh, I would say two thousand shares,—something like that.

Q. How heavy a stockholder at that time was Mr. Thompson?

A. Well I would want to be within reason,—I would say two or three hundred shares.

Q. Was Mosher ever president of the company, or an official?

1465 A. Vice President.

Q. And sometimes he would negotiate these loans for the Gas company, would he?

A. Yes, sir.

Q. And sometimes, Mr. Thompson would?

A. Well he and Mr. Thompson together, I think they generally consulted, but possibly not always. They kept the thing going with money until we sold our bonds and just as soon as the bonds were sold and the money came in then I paid off these notes.

Q. Those bonds were not sold until 1892?

A. Something like that; we were doing a great deal of construction work, and was at a heavy expense.

Q. That construction work was in 1892?

A. Well it commenced in 1890.

Q. The bond issue to which you refer was in 1892?

A. I think they were mostly sold in 1892.

Q. Those were sold by Stull Brothers, weren't they,—negotiated?

A. A great many of them.

Q. Along about March 29th, 1892 Stull Brothers negotiated \$24,750 of bonds for the company didn't they?

A. Whatever it shows there; they made numerous sales.

Q. Is that correct?

A. Yes, sir.

Q. And on about March 31st, 1892 Stull Brothers sold \$50,000 more of bonds for you?

A. Yes sir.

Q. And on April 1st, Stull Brothers negotiated \$50,000 more in bonds?

A. Yes, sir.

Q. And on April 7th, Stull Brothers negotiated \$38,000 more of bonds for you?

1466 A. Yes sir.

Q. And on April 13th, Stull Brothers negotiated \$10,000 more of bonds for you?

A. Yes, sir.

Q. And April 25th, Stull Brothers negotiated \$25,000 more of bonds for you?

A. Yes, sir.

Q. And April 28th, Stull Brothers negotiated a \$1,000 bond for you?

A. Yes, sir.

Q. And May 4th Stull Brothers negotiated \$11,000 more of bonds for you?

A. Yes, sir.

A. I didn't borrow the books.

Q. When did you get these books Mr. Honeywell?

A. Got them in the room there this morning.

Q. How long since you have been connected with the Gas company?

A. October 1900, I think.

Q. Eleven years ago?

A. Something like that. Ten years last October.

Q. And do you know where these books have been?

A. I don't know where they have been, but I have got a guess a coming.

Q. I would like to have your guess.

A. I think they were in the possession of the Gas company.

Q. The present corporation?

A. Yes sir.

Q. Of which Mr. Armstrong is president?

A. Yes, sir.

1467 Q. They have been in Mr. Armstrong's possession?

A. I think so naturally,—that is, in the possession of the Gas company.

Q. Well Mr. Armstrong is now president?

A. That's right.

Q. And they have been in the custody of that company?

A. Yes sir.

Q. And who directed you to come here as a witness,—who requested you to come here as a witness?

A. Mr. Mullen told me.

Q. As representing Mr. Thompson?

A. I think so.

Q. Did he tell you that he had the books of the old company here?

A. I think so.

Q. I believe you said the period during which these notes were given the company were doing some heavy construction work. Were they constructing a part of the plant?

A. No, mostly new.

Q. Rebuilding it, and that was the occasion of your borrowing money at that time?

A. Yes sir.

Q. And you were borrowing pretty heavily during these periods?

A. That's right, until we got returns from the bonds.

Q. What is this entry here on the Journal, "Cadiz note" under May 30th, 1891? What does that indicate?

A. It would indicate the interest that we paid.

Q. Was that the interest on the Cadiz note?

A. I would think so.

Q. That was interest on that note. Was that the \$10,000 note to which you have referred?

A. I expect it is.

1468 Q. Is that what it was?

A. I think so.

Q. That was on the \$10,000 note?

A. Yes, sir.

Q. And you spoke of another item there in which it appears the books of the Capital National Bank show a credit for \$4,858.06. You say that credit grew out of a note of \$5,000 that was negotiated or rediscounted by Farson, Leach & Co.?

A. Yes, sir.

Mr. ROSE: You mean rediscounted?

A. No.

Q. The note by your company,—you gave it to the Capital National Bank and took credit and they sent it to whoever ultimately got the note, was that it?

A. Yes sir.

Q. Who was it, this firm of Farson, Leach & Company?

A. Yes, sir.

Q. Were they at Chicago?

A. That is my recollection, that they were bankers of Chicago. It may be New York for all I know.

Q. And is that the same matter that is referred to in the entry on your ledger under May -st, Bills Payable \$5,000 debit?

A. Yes sir, that has been deposited with the bank.

Q. That is a charge to the Capital National Bank of \$5,000?

A. Yes, sir.

Q. And on the Journal under date of April 27th, 1891 is a charge to the Capital National Bank,—Farson, Leach & Company, \$5,000 isn't there?

A. Yes sir.

Q. That note that was given for \$10,000 bore eight per cent interest, didn't it?

A. On the Cadiz Bank, eight per cent.

1469 Q. And at that same time the bank,—or your Gas company had a certificate of deposit on the Capital National Bank for \$25,000 bearing 6% interest, as shown by your entry on your books of July 29th, '81, that's true?

A. Yes sir, I think so.

Mr. THOMAS: That is all with the understanding that we can have access to the books.

Redirect examination.

By Mr. ROSE:

Q. Was this Gas company financed in any degree out of the Capital National Bank funds, or by the Capital National Bank?

A. No sir, only by Mr. Mosher and Mr. Thompson.

Q. Who was an officer of the company.

A. Yes, sir.

Q. Your notes to other payees were charged to the bank when the funds came in from time to time?

A. Yes sir.

Q. And funds at time were derived from the negotiations of notes for larger sums were they?

A. Yes, sir.

Q. You spoke of Mr. Mosher negotiating notes. Do you remember about the loans from the Penn Mutual Life Insurance Company of Philadelphia?

A. Not particular, except I remember that they were pretty large sum.

Q. Do you remember who negotiated those?

A. I rather think Mr. Thompson had more to do with that than Mosher, although I wouldn't want to swear to that.

Q. Do you remember who endorsed the notes?

A. Mr. Thompson did.

Q. Now when large sums came in advance there to prepare for future work what did you do with the funds,—did you leave
1470 them all in open account, or try to get interest on them?

A. Well I think we tried to get interest once or twice; I don't think we had occasion to get much interest; I don't think the sum was large enough, but what we had a place to put it right away.

Q. Were there some large loans made from the Penn Mutual?

A. Yes, sir.

Q. What I wanted to get at was, when you made those large loans until you had an actual call for the disbursement of the funds, did you leave them lie idle in your open account?

A. I think they were nearly always,—I see one place we had loaned out \$25,000 but I had forgotten about that. We had taken a certificate of deposit there for \$25,000 on one occasion. We used that money and drew it all in \$5,000 and \$10,000 at a time,—that certificate of \$25,000 we drew that at three or four different times.

Q. Your record here is correct as to all those transactions?

A. Yes, sir.

Q. And all made by yourself?

A. Yes, sir.

Q. And at the time you had personal knowledge of the transactions, and knew they were correct?

A. Yes, sir.

Q. Did you make a bona fide deposit for that certificate of deposit, or put the funds in the bank for it?

A. It must have been transferred from one account to the other.

Q. But did the money go into the bank for every credit that you actually used?

A. Yes sir.

Q. Did it always go in?

A. Yes sir.

Mr. ROSE: That is all.

1471 By Mr. THOMAS:

Q. That certificate of deposit of \$25,000 was in July, 1891, and that was a year prior to the issuing of any of those bonds, wasn't it?

A. Yes, the bonds I think was sold mostly in 1892, but they were issued in September, 1891.

Q. Didn't actually get any proceeds until the bonds were sold, did you?

A. I know but we had other sources of getting money without borrowing the money.

Q. How many shares of stock were owned by Mr. Outcalt?

A. Nearly as much, but not quite, as Mosher.

Witness excused.

* * * * *

1472 Mr. E. B. STEPHENSON, called as a witness of behalf of the defendants and being first duly sworn testified as follows, to-wit:

Direct examination.

By Mr. ROSE:

Q. Where do you live and what is your business?

A. I live in Lincoln, Nebraska, and my business is I am financial correspondent for the Northwestern Mutual Life Insurance Company of Milwaukee.

Q. Were you city treasurer of Lincoln at the time of the failure of the Capital National Bank in 1893?

A. I was.

Q. State whether or not Mr. Thompson was one of your bondsmen?

A. He was.

Q. At that time were you a man of any considerable pecuniary resources?

A. No; I had some good property, a residence and some Lincoln lots, and some lands in the state.

Q. Did you have a deposit in your official right in the Capital National Bank at the date of the suspension, and if so how much?

A. The Saturday preceding the failure of the bank at the close of business in my office as city treasurer I had \$21,560.39.

Q. Now was the subject matter of your liability for that fund mentioned at or about that time, the time of the failure, between you and Mr. Thompson?

A. Yes, sir.

Q. Did you in conjunction with Mr. Thompson take any action in respect to the disposition of your claim against the bank after the failure of the Capital National Bank, and if so state what the transaction was.

1473 A. Well soon after the failure of the bank I called on several of my bondsmen that were bankers in Lincoln, among them were Mr. Thompson, and advised with them as to whether or not I had not best accept an offer of seventy five cents on the dollar for an assignment of my claim against the Receiver of the Capital National Bank; those I called upon were Mr. Thompson, Mr. E. E. Brown, Mr. John H. Ames, Mr. Harvard, and Mr. J. D. McFarland.

Q. I think it will probably not be material what the others advised, but you may state what action was taken by Mr. Thompson, and what course was pursued on his advice?

A. I called on Mr. Thompson, with the others, several times; not less than four times, and advanced what arguments I had in my judgment about accepting the offer of seventy five cents on the dollar for the claim; if I may state the reason for that was the gossip I heard about the streets; I had heard that Mr. Morris Humphrey, one of the Humphreys in the hardware business had a claim of several thousand dollars which he sold to N. C. Brock for seventy five cents on the dollar, and I called upon him, —he was a very careful business man and a heavy depositor there and I felt I could advise with him and did, and he advised me to accept 75c on the dollar; he said if it was his claim he would do it, and I mentioned that fact to the people I talked with. The last time I called on Mr. Thompson I told him I was disturbed and really thought I was right, that I had better accept the offer for the claim, and that if I did I could pay out myself and escape criticism as one would for having public moneys on deposit, and have it tied up in the bank, and apparently lost,

1474 and I really desired to do it. Mr. Thompson, with more anger than he ever displayed before or since in talking to me about anything, said that I ought to have more sense and more patience than to listen to gossip on the street about the failure of the Capital National Bank, and its assets and capabilities for paying out, and that he thought I ought not to suffer that loss; that if the bank's affairs were handled properly there were ample assets there to pay the depositors. As I say after the fourth time talking with Mr. Thompson and the other bondsmen I never again raised the question. About a year or nearly a year after that I became advised there was going to be a pretty serious loss fall on me because the bank wouldn't pay out. The reason for that if I may state,—my reason for it—

Q. And did you then use your own property as far as you could?

A. Yes sir.

Q. And after doing that did you have to have assistance from your bondsmen?

A. I deeded in trust to my bondsmen all the real estate I had, and I raised what cash I could. Mr. Thompson and the rest contributed about—between five and six thousand dollars in cash, and with the credits that the city allowed me on account of clerk hire and interest on deposits that I should have, we balanced the account, and I as-

signed the claim against the Capital National Bank to the city of Lincoln, and the city now has it; but in that manner we paid the whole amount over.

Mr. ROSE: That is all.

1475 Cross-examination.

By Mr. THOMAS:

Q. You ultimately paid it all yourself?

A. In that manner we paid it all.

Q. Did the bondsmen suffer any loss ultimately on account of your stewardship?

A. I don't know Mr. Thomas, whether or not the trusteeship has been entirely disposed of. The real estate I gave my bondsmen at that time was not considered very valuable; it was during the panic; some of it was sold and some of it has been paid, and some of it has been retained. I am inclined to think there is a quarter section of land that the trustee held and it increased considerably in value, and if so they're entirely paid.

Q. Who was the trustee?

A. Mr. C. D. Mullen, a particular friend of mine.

Q. And is it your belief and impression now that the property you turned over to your bondsmen has been sufficient to reimburse them for all the money they advanced to the city?

A. I think so.

Q. Mr. Stephenson, you are one of the stockholders in the Lincoln Hotel company with Mr. Thompson and Mr. Mullen?

A. Yes sir.

Q. And have been associated with Mr. Thompson for a number of years?

A. Yes sir.

Q. You are one of the largest stockholders in the company aren't you?

A. In the hotel company?

Q. The second largest stockholder?

A. No, I own a quarter interest in it; Mr. Thompson owns a half interest in it.

1476 Q. And you have been interested with Mr. Thompson for a number of years in various enterprises haven't you?

A. I have been in a small way, been in three or four that Mr. Thompson has been a large stockholder in.

Q. And your personal relations with Mr. Thompson and Mr. Mullen has been very close?

A. Exceedingly close.

Mr. THOMAS: That is all.

By Mr. BISHOP:

Q. Mr. Stephenson, I call your attention to certificate of Capital Stock of the Capital National Bank, No. 27, in the name of R. E. Moore in Exhibit No. X-27, and will ask you to look at the face

of the stock, and also at the assignment on the back of it and state if you know whose signature is upon the assignment.

A. The face of the certificate is signed by R. C. Outcalt and C. W. Mosher, and the assignment on the back of the certificate is made by R. E. Moore.

Q. Are you acquainted with the signature of Mr. R. E. Moore?

A. Yes, sir.

Q. Then turn to similar certificate, No. 82 and observe the face of it and the signature on the assignment on the back and state whose are the signatures, if you know.

A. The signatures on the face of the certificate are those of R. C. Outcalt and C. W. Mosher, and on the back of the certificate that of R. E. Moore.

The COURT: What is the date of the assignment?

Q. That assignment is September 3rd, 1891; they're both on the same date.

1477 Q. Then Mr. Stephenson, I call your attention to six receipts and ask you if you were acquainted with the writing of Mr. Mosher?

A. I was.

Q. Whose writing constitutes the body of those receipts, if you know?

A. I couldn't state positively; it's a long time since I have seen Mr. Mosher's writing that I know of, but my recollection is, and belief is that he did the writing on each of these certificates; it looks like his work, all of them.

Exhibit "AW" identified.

(Six receipts.)

Mr. BISHOP: The defendant Hamer offers in evidence the two certificates numbered 27 and 82.

Received in evidence without objection.

(Originals on next two pages.)

Mr. BISHOP: I offer in evidence Exhibit "AW".

By Mr. THOMAS:

— Those are not signed by anybody, but simply a rubber stamp signature, isn't it? That is, the words "Capital National Bank, Lincoln, Nebraska," are made by a rubber stamp?

A. Yes sir. As I understand it I was questioned as to the handwriting with a pen.

Q. You didn't refer to the signature?

A. I didn't understand the question to cover the signature.

Q. Well the facts are in each case, as to each of these six papers that are identified as Exhibit "AW" they're simply a rubber stamp signature, that is, the words "Capital National Bank, Lincoln,

1478 Nebraska" are made by a rubber stamp?

A. Yes sir.

Q. And of course it is impossible for you or anyone else to say

who placed the name "Capital National Bank, Lincoln, Nebraska" on that purported receipt?

A. No, I don't undertake to say who did that.

Q. Were you acquainted with Mr. Mosher during his life time?

A. Yes sir.

Q. Did you ever have any business with him so you are familiar with his writing, other than his signature?

A. Yes sir, I have seen letters, and oh,—I think I used to—he was quite energetic in politics and I think I have seen resolutions and things of that sort, and he used to address letters to the state treasurer's office about taxes and things of that sort; I frequently saw his writing.

Q. Calling your attention to receipt dated "10/1-1884" do you think that is Mr. Mosher's writing?

A. Yes, Mr. Thomas, I think it is.

Mr. THOMAS: We object to the exhibit offered as incompetent, irrelevant and immaterial; no foundation laid, and not relevant to the issues.

Objection overruled.

Plaintiffs except.

Exhibit "AW" received in evidence.

(Copy follows) p. 1403.

1479

Certificate of Stock No. 27.

The Capital National Bank of Lincoln, Neb.

No. 27.

10 Shares.

This is to Certify that R. E. Moore, is entitled to Ten Shares of One Hundred Dollars each of the Capital Stock of the Capital National Bank transferable only on the books of the Bank in person or by Attorney on the surrender of this certificate.

Witness the Seal of the Bank and the signatures of the President and Cashier this first day of Sept. A. D. 1884.

[SEAL.]

R. C. OUTCALT, *Cash'r.*

C. W. MOSHER, *Pres't.*

Shares \$100 Each.

Endorsed: For value received the undersigned hereby sell assign and transfer unto ——— Shares of the Capital stock of The Capital National Bank of Lincoln, Nebraska, and do hereby constitute and appoint ——— my true and lawful attorney irrevocable, for and in my name and behalf to make and execute all necessary acts of assignment and transfer required by the regulations and by-laws of said Bank.

In witness whereof I have hereunto set my hand this 3rd day of Sept. 1891.

R. E. MOORE.

[In pencil across face:] Cancelled.

(Here follows certificate of stock No. 82 of the Capital National Bank of Lincoln, Neb., marked page 1480.)



STATE OF NEBRASKA

THE CAPITAL NATIONAL

BANK

OF LINCOLN, NEB.



No 82

Shares

This is to Certify that R. E. Moore is entitled to
Five Shares of **ONE HUNDRED DOLLARS** each
of the Capital Stock of **THE CAPITAL NATIONAL BANK** transferable only on the
books of the Bank in person or by Attorney on the surrender of this Certificate.

Witness the Seal of the Bank and the signatures of the President and Cashier
this 1st day of July A.D. 1886

R. C. Outcault Cash. C. W. Mosher Pres.

SHARES \$100 EACH.

FOR VALUE RECEIVED the undersigned hereby sell, assign and
transfer unto _____ Shares

of the Capital Stock of The Capital National Bank of Lincoln,
Nebraska, and do hereby appoint, constitute and appoint

my true and lawful attorney irrevocable, for and in my name
and behalf to make and execute all necessary acts of assignment
and transfer required by the regulations and by-laws of
said Bank.

IN WITNESS WHEREOF I have hereunto set my hand this 3rd
day of Sept. 3, 1891.

(Signed)

R. F. Moore.

1481

EXHIBIT A. W., 6 REC'TS.

Oct. 30, 1884.

Received of E. P. Hamer Six Hundred Dollars final payment.
\$600.00.CAPITAL NATIONAL BANK,
Lincoln, Neb.

10/1, 1884.

Received of E. P. Hamer Five Hundred Dollars for stock.
\$500.CAPITAL NATIONAL BANK,
Lincoln, Neb.

Aug. 30, 1884.

Received of E. P. Hamer Five hundred Dollars on stock being
80%.
\$500.00.CAPITAL NATIONAL BANK,
Lincoln, Neb.

7/31, 1884.

Received of E. P. Hamer Five Hundred Dollars 3rd assessment.
\$500.00.CAPITAL NATIONAL BANK,
Lincoln, Neb.

June 30, 1884.

Received of E. P. Hamer Five hundred Dollars 10% assessment
on stock of ————.
\$500.00.CAPITAL NATIONAL BANK,
Lincoln, Neb.

May 31, 1884.

Received of E. P. Hamer Twenty five hundred Dollars being 50%
subscription to stock of ————.
\$2500.00.CAPITAL NATIONAL BANK,
*Lincoln, Neb.*1482 Mr. C. E. YATES called as a witness on behalf of the de-
fendants and being first duly sworn testified as follows, to wit:

Direct examination:

By Mr. BISHOP:

Q. What is your name?

A. Charles E. Yates.

Q. Are you one of the defendants in this action?

A. Yes, sir.

Q. Where do you live, Mr. Yates?

A. Lincoln, Nebraska.

Q. How long have you lived there?

A. Since '77.

Q. Continuously?

A. Yes sir.

Q. What has been your business up to a short time ago?

A. Railroad man.

Q. What was the character of your business, what did you do?

A. Superintendent of the Telegraph for the Burlington.

Q. When did you begin to work for the Burlington railroad?

A. I started in '63 in Burlington, Iowa.

Q. At what sort of work?

A. I started in as operator and freight clerk at Ottumwa, Iowa.

Q. When you came to Lincoln what kind of work did you do?

A. Dispatcher, and Superintendent of Telegraph.

Q. Did you remain Superintendent of Telegraph for the Burlington until 1896?

A. Until 1905.

Q. Did that cover the period that Mr. Thompson was superintendent?

A. Yes sir.

1483 Q. And the construction of the lines that he has referred to?

A. Yes sir.

Q. What in a general way was the character of your work as superintendent, and as to having to be away from home to do that work.

A. I superintended the construction of new lines and repairs and at one time had charge of the operators, but that got to be too heavy and I gave that up.

Q. How about your work requiring you to be away from home?

A. I was away about three fourths of the time.

Q. Were you interested in the Capital National Bank at Lincoln?

A. Yes sir.

Q. Were you a stockholder in that bank?

A. Yes, sir.

Q. When did you become a stockholder in that bank?

A. I have got a little memorandum here,—I think it was June 1st 1884.

(Witness refers to paper.)

Q. What amount of the capital stock of that bank did you take at that time?

A. I took fifty shares.

Q. Did you pay the full par value of that stock at the time it was issued to you?

A. Yes sir, I paid a premium.

Q. Whom did you pay for that stock?

A. C. W. Mosher.

Q. In the bank?

A. Yes sir.

Q. And right over the bank's counter?

A. Well I suppose so; I sent him a check.

Q. On a deposit that you had there?

1484 A. Yes sir.

Q. And the amount of the check at the time?

A. I won't say positive whether it was a check there, or the First National Bank.

Q. The point was you had the funds on hand and transferred them to pay for that stock.

A. Oh yes, yes sir.

Q. Did you ever afterwards acquire more stock?

A. Yes sir.

Q. Of the Capital National Bank?

A. Yes, sir.

Q. When was that?

A. The next was July 1st, 1886; I got 25 shares then.

Q. Was that the time that the capital stock of the Capital National Bank was increased?

A. Yes, sir.

Q. Did you pay the full par value of the stock?

A. Yes sir.

Q. And paid it to the Capital National Bank?

A. Yes sir.

Q. And did you af-erwards acquire any other stock besides that?

A. Yes sir, I have taken it up when it was offered to me. The next was July 9th, '88.

Q. How much stock did you acquire then?

A. I got 33 shares.

Q. From whom did you get that?

A. I don't remember.

Q. What did you pay for it?

A. One thirty five.

Q. And did you actually pay for that stock?

A. Yes, sir.

1485 Q. Did you acquire any other besides that?

A. Yes sir, January 28th, 1889 I bought five shares.

Q. From whom did you buy that?

A. From Mrs. J. E. Baum, Omaha.

Q. What did you pay for that?

A. One forty.

Q. Did you actually pay the full amount of one-forty for that stock?

A. Yes sir.

Q. Did you own any other stock now, besides those?

A. No sir.

Q. Did you retain any or all of that stock up to the time of the failure of the Capital National Bank?

A. I did.

Q. All of it?

A. All of it.

Q. Were you assessed by the United States Government, or the Comptroller of the Currency for your stock holding,—on all of that stock you have described?

A. Yes sir.

Q. What amount was assessed against that stock?

A. Well I had 113 shares, and it was assessed at par, that would be \$11,300, and then I had to pay a little interest.

Q. Did you pay the full amount of that assessment to the Receiver?

A. Yes sir.

Q. And interest?

A. Yes sir.

Q. When the Capital National Bank was organized as such I will ask you Mr. Yates, if you took any part in the meetings by which you and the other gentlemen became directors in that Capital National Bank?

1486 A. No sir.

Q. Were you in attendance at the meetings in which the assets of the Marsh National Bank, or the Marsh Brothers, Mosher & Company were discussed, as to whether they should be taken into the Capital National Bank or not?

A. No sir, I wasn't.

Q. Did you have any knowledge then or afterwards of the assets of either of those institutions going into the Capital National Bank?

A. No sir.

Q. Did you know anything about a committee being appointed to look into the matter of assets, consisting of Mr. Holmes, and Stuart and Mosher?

A. No sir.

Q. That matter of the transfer of assets and the starting of the Capital National Bank was not a matter that was discussed in any meeting that you attended?

A. No sir.

Q. That is, you didn't attend the meetings which took up that matter?

A. No.

Q. Did you know at the time of your becoming associated with the Capital National Bank, or subsequently, of an account known as the Donnell, Lawson & Simpson account?

A. No sir.

Q. When did you become a director of the Capital National Bank?

A. Well I don't remember now; it was shortly after I bought the stock; I was made a director while I was out on the road as I remember.

Q. And found it out when you returned?

A. Yes, sir.

1487 Q. That was sometime during the summer of 1884?

A. Yes sir.

Q. Did you ever know, or have any intimation of this account of Donnell, Lawson & Simpson ever being in or counted among the assets, or shown upon the books of the Capital National Bank?

A. No sir, I never knew nothing about it.

Q. Did you have any knowledge at the time you entered the bank or afterwards of paper or bills receivable or assets purporting to be the paper of Marsh Brothers, or any of the Marsh manufacturing companies?

A. No sir, knew nothing about it.

Q. Never knew that any of the paper of those institutions were in the Capital National Bank?

A. No sir.

Q. Did you know at any time of an account going into the Capital National Bank from those older institutions known as Stock & Bond account, and purporting to represent assets derived from any of those institutions or Marsh Brothers, or of Mosher, Marsh Brothers and Company?

A. No sir, I did not.

Q. In regard to those matters of assets and the books showing assets, what experience did you ever have, Mr. Yates, in keeping books of any institution?

A. I never kept books; don't know anything about it.

Q. Did you ever have any experience in examining or going through a set of books of a bank, or any other such institution?

A. No sir, I couldn't do it.

Q. Did you ever examine into or look over the books of the Capital National Bank while you were connected with that bank, or during its history?

A. No sir.

1488 Q. Had you ever had any education in bookkeeping, or keeping accounts?

A. Well a certain kind of an account; I couldn't keep no regular books, as double entry or double ledger and so forth.

Q. Never had any of that?

A. No sir.

Q. Would it have been possible for you with your experience during the time you were connected with the Capital National Bank to take up its set of books and ascertain the condition of its accounts or of any of its assets or liabilities from the books themselves?

A. No sir, couldn't do it.

Q. Did you know of an individual deposit ledger or book kept in that bank?

A. No sir, never saw it.

Q. Did you know of a general balance book kept in that bank?

A. Never saw it, no sir.

Q. Did you know of the cash journal, or cash book?

A. Didn't know anything about it.

Q. What then would you say as to your ability, if you had under-

taken to go through the books of the bank to ascertain either its assets or its liabilities?

A. I couldn't do it.

Q. There was an account also under the name of Exchange account, which was kept in the Capital National Bank, and said to have resulted in losses; did you know anything about that account, or what constituted it, or of any losses arising from it?

A. No sir, I did not.

Q. When you became a director of that bank who were elected officers of the bank, as president and cashier?

A. Why the election was made before I—well I wasn't
1489 present but I understood that Mr. Mosher and Outcalt was elected president and cashier.

Q. When you first became interest- in that bank and went to it to see about its business, who were acting as president and cashier of the bank?

A. Mr. Outcalt and Mr. Mosher.

Q. Had you any acquaintance with either of those men?

A. Well not very much; I knew them by sight.

Q. Which one did you know better?

A. I knew Outcalt.

Q. You knew Outcalt better?

A. Yes sir.

Q. Did you know anything about the standing and reputation of those men at that time?

A. Well only from hearsay, that's all.

Q. Did you make inquiry to find out?

A. Why Captain Phillips recommended Outcalt to me.

Q. What was the standing and reputation of Mr. Mosher and Mr. Outcalt in the community at the time you became associated with that bank?

A. First class.

Q. Their personal reputation you mean?

A. Yes sir.

Q. For honesty and good character.

A. Yes sir, good character.

Q. What was their reputation as to being men of affairs and having money?

A. Well they were counted quite wealthy.

Q. Both of them?

1490 A. Yes sir, and good business men.

Q. Did you know Professor Stuart and Mr. Holmes, who were on the discount committee of the bank?

A. Yes sir, I knew them.

Q. Did you know them at the time you became associated with the bank?

A. Yes sir.

Q. What was their standing for character and probity, and as to being men of affairs and of wealth in that community?

A. None better in the city; they stood high.

Q. Did you attend the meetings of the directors of the Capital National Bank; explain how that was, and when.

A. When I was in town, if I was notified or heard that there was a meeting I always attended.

Q. Where were those meetings held?

A. Why in the bank parlor there, as you might call it, of the Capital National Bank,—the front room.

Q. Which room do you mean by the front room?

A. The one that faced on "O" street.

Q. At the north end of the banking room?

A. Yes sir.

Q. Did you attend a good many of the meetings of the bank?

A. I always attended every one when I could; when I was in town.

Q. At what time of day were those meetings held?

A. Always held at night.

Q. All of the directors' meetings you ever attended were at night?

A. Yes sir.

Q. And what do you mean by that?

A. Why they would convene about seven or eight o'clock.

Q. After the evening meal?

A. Yes sir.

1491 Q. Did you attend any meetings of the directors where dividends were declared?

A. Yes sir.

Q. What was the plan or method by which you arrived at declaring dividends, and upon what showing were the dividends declared?

A. Why Mosher would pass a paper showing the earnings and expenses, and would take out a certain amount for a surplus and the balance would be passed to dividends, and then a motion would be made what to do with it; a motion would be made declaring a dividend of a certain percent.

Q. Was a dividend ever declared at any meeting which you attended where that showing wasn't made?

A. No sir, it was always made.

Q. Was there a dividend declared at any time when there wasn't a showing of net earnings out of which to make a dividend?

A. No sir.

Q. Was there ever a dividend declared, that some amount wasn't passed to surplus?

A. Always passed to surplus.

Q. Did you ever at any of those meetings have any intimation of any facts other than what was made to you by the officers of the bank as to the earnings?

A. No sir.

1492 Q. State whether you had any belief in those reports of the condition of the bank, and that net earnings were really in existence and something to pass to surplus at the times of those dividends?

A. It was believed or else the directors wouldn't have made it.

Q. I am asking you what your belief was.

A. I wouldn't have made it.

Q. What was your belief as to the net earnings

A. That the report was true.

Q. What was your attitude towards Mosher and Outcalt throughout your entire connection with the bank as to belief in their honesty and integrity and the truthfulness of the statements they showed you at dividend periods, and as to their conduct of the bank's business?

A. I believed they were all right; I believed everything they said was true.

Q. Had you anything or any intimation to discredit their statements, or their conduct of the business of the bank?

A. No sir.

Q. Did that confidence in their honesty and integrity exist throughout the existence of the bank?

A. Up to the time the bank failed, yes sir.

Q. When were you ever advised of any discredit, or anything that would throw discredit upon them?

A. Never heard anything.

Q. Until the failure of the bank?

A. No sir.

Q. Now during the existence of that bank did you sign any of the reports, which were made to the Comptroller of the Currency?

A. Those that were brought down and attested by Mr. Mosher and Outcalt, I signed.

1493 Q. Were you ever present at a meeting that you remember, where any of those reports were discussed before they were made?

A. No sir, never.

Q. The reports which you signed or attested, did you ever sign or attest any of them in the bank yourself?

A. No sir; they were always sent to my office.

Q. How were those reports signed, or otherwise authenticated at the time they were brought to you for attestation?

A. Why a notary would attach his seal to Mr. Mosher's and Mr. Outcalt's signature, and sometimes there would be two or three names ahead of mine.

Q. Did you ever sign or attest a report which was not already sworn to by either Mr. Mosher or Mr. Outcalt?

A. No sir, never.

Q. What reliance if any, did you put in the truthfulness of the statement on account of its being sworn to by the managing officers of the bank?

A. Why I had confidence in both of those gentlemen, Mosher and Outcalt.

Q. What influence did that have upon your attesting the report?

A. Why it made me sign it; I had confidence in them or else I wouldn't have done it.

Q. Did you ever go through the books of the bank, or take any part in observing them in the bank room where the clerks operated

upon them or where the business of the bank as to bookkeeping and handling its papers was being carried on?

A. No sir, I didn't; I never was behind the counter.

Q. Where the clerks and tellers and workmen of the bank were at work.

A. No sir; I never examined a book.

Q. What reason was there for that?

1494 A. Well I had confidence in the people that was in there, and I knew nothing about the books.

Q. And wouldn't be able to ascertain from them if you did do that?

A. Oh, no. No sir.

Q. Did some of the directors of the bank live in Lincoln?

A. Yes sir, they all lived there.

Q. So that their business was there constantly?

A. Yes sir.

Q. Was it know- to the rest of them that your business was that of a railroad man and required to be out on the line?

A. Well I should judge so; everybody knew that I was a railroad man and what my duties were.

Q. Did you at any time during the existence of the bank and up to the time of its failure know or have any intimation that any statements or items contained in any reports given to the Comptroller of the Currency, and attested by you were untrue in any respect?

A. No sir.

Q. Did you ever take any part in making or causing to be made any of the entries upon the books of the bank directly yourself?

A. No sir.

Q. Did you ever have any knowledge or intimation that any of the entries made upon the books of the bank were untrue?

A. No sir.

Q. And did not represent the actual transactions of the bank?

A. No sir.

Q. What knowledge, if any, did you have of Mosher and Outcalt borrowing money from the bank?

A. I didn't know anything about it; never heard of it; if I had I would have raised a row.

1495 Did you borrow from the Capital National Bank at any time?

A. I made some small loans there, yes sir.

Q. And do you remember when, or what years that those loans were made?

A. No sir, I don't.

Q. What if anything was done by you to pay those loans to the Capital National Bank?

A. I paid them as soon as I could to stop the interest; I paid them within a month or two.

Q. Well was there any of the loans that you ever made at the Capital National Bank which you did not pay?

A. No sir.

Q. In full.

A. No sir.

Q. Did you know of Mr. Holmes one of the directors borrowing as high as seventy thousand dollars from the bank?

A. No sir, I never did.

Q. When you speak of Mosher and Outcalt borrowing; did you know that they borrowed above the ten per cent of the capital of the bank?

A. No sir, I knew nothing about it.

Q. That is what you refer to when you say you didn't know of their borrowing?

A. Well borrowing in a large amount.

Q. Now it has been shown in evidence here about some transactions carried on by E. W. Mosher, in loans made in York and Hamilton counties,—transactions in which his paper was taken into the bank. Did you know anything about those loans, or the transactions of E. W. Mosher?

A. No sir.

Q. Did you ever know of his paper being taken into the 1496 bank?

A. No sir.

Q. Or his being given credit there?

A. No sir.

Q. So that the E. W. Mosher business you didn't know about as it occurred?

A. No sir.

Q. There has another transaction been shown in the testimony here of Mr. Small, and notes of Small taken into the bank; did you know about the loans made to Mr. Small, or any of his credits in the bank?

A. No sir.

Q. That transaction you didn't know about as it occurred, nor afterwards?

A. No sir, knew nothing about it.

Q. There was a letter from the Comptroller of the Currency dated February 16th, 1892, which mentioned some of these items, and that letter purports to bear your signature. Do you remember of having signed that letter?

A. No sir, I don't.

Q. There is a meeting of the directors reported in the minutes of date February 20th, 1892 when that letter was said to have been discussed. Do you have any recollection of being present at that meeting?

A. No sir, I wasn't.

Q. Do you know of the minutes of that meeting, or any others of the directors ever being read over at subsequent meetings?

A. They never were read in my presence.

Q. It has been shown here that there were dealings of the bank in which it is claimed there was a loss, and credits taken to Mosher and Outcalt unjustly, concerning the Relief fund, which the state

furnished to sufferers in the drouth. Did you know anything about the handling of that Relief fund?

1497 A. No sir.

Q. Or anything about the disposal of that fund, or how it was withdrawn from the bank?

A. No sir.

Q. Did you know that any of the dealings in that fund resulted in credits to Mosher and Outcalt, either justly or unjustly?

A. Knew nothing about it.

Q. There is shown to have been handled in the bank paper of the Western Manufacturing Company, signed by E. Hurlbut. Did you know of a Western Manufacturing Company?

A. Well I knew of the so-called company down there that Mr. Welch was with, and a man by the name of Barton; he was there first and Welch took his place, but I never knew anything about it personally.

Q. Where do you mean,—at the penitentiary?

A. Yes sir.

Q. That was an actual company that did business?

A. Yes sir, oh, yes.

Q. A manufacturing company.

A. Why Welch used to make barrels. Whether he made anything else or not I don't know; I never was down there.

Q. Did you ever have any knowledge or intimation of the existence or operation of a company known as the Western Manufacturing Company, in which Mr. Hurlbut was manager?

A. No sir, I knew nothing about it.

Q. And Mr. Charles W. Mosher was president?

A. I knew that one company, but I didn't know who the president was.

Q. Well did you know of a company of which Mr. Mosher was president, and which was said to have begun its business on a capital of \$25,000 borrowed from the Capital National Bank?

1498 A. No sir, I never knew anything about that.

Q. Did you ever know or have any intimation of paper or notes or other obligations signed by that company, by E. Hurlbut, Junior, as general manager or otherwise, being taken into the Capital National Bank and carried as assets of the bank?

A. No sir, knew nothing about it; I never knew Mr. Hurlbut.

Q. You never knew him?

A. No sir.

Q. Mr. Yates, did you keep a deposit in the Capital National Bank, personally?

A. I did.

Q. How long,—for what time?

A. Why ever since I was connected with the bank as a stockholder.

Q. Up to the time of its failure?

A. Yes sir.

Q. How much money did you have on deposit at the time of the failure of the Capital National Bank?

(Witness refers to paper.)

A. I had \$3,063.90,—no, excuse me. I had \$3187.94.

Q. Was that account a continuous one throughout the existence of the bank?

A. It was, yes sir.

Q. Increasing and decreasing with the transactions in your own business?

A. Yes sir.

Q. When had you put any money in the bank just before its failure?

A. Why a very few days before.

Q. What day was it?

A. Why it was on the 16th.

Q. Of January?

A. Yes, sir.

Q. 1893?

A. 1893.

1499 Q. What amount did you put in the bank on that day?

A. I put \$3,063.90.

Q. And that remained there until the failure of the bank?

A. Yes sir.

Q. Would you have retained your stock and made deposits in that bank throughout its history from the time you became connected with it, if you hadn't had confidence in the integrity and honesty of the management of the bank by Mr. Mosher and Mr. Outcalt?

A. No sir.

Q. Did you know anything about the plan to increase the capital stock of the Capital National Bank referred to in the testimony here as an effort to raise the capital to one million dollars?

A. Well only when I was in the bank there once,—I guess it was a directors' meeting, why they sprung the proposition.

Q. Who did that?

A. Why I suppose Mosher,—he was always talking.

Q. What was your attitude on that proposition of increasing the capital to a million dollars?

A. I was opposed to it.

Q. What was your reason for being opposed to it?

A. Why there was no demand for the money; didn't think they could loan it to good advantage; I didn't think we could loan it in Lincoln.

Q. At any meeting of the directors or officers of the bank that you attended was that matter ever discussed and authorized by anyone?

A. Not in my presence, no sir. At that meeting it was set down on.

1500 Q. What meeting do you refer to?

A. That I was present about increasing the capital to one million dollars.

Q. Was that a meeting of the stockholders?

A. Why I suppose so.

Q. A stockholders' meeting.

A. Yes sir, and it was opposed and nothing was done.

Q. You say at that meeting it was denied.

A. Yes sir.

Q. And no proceeding or action was taken to authorize or permit any such campaign as raising the capital to a million dollars.

A. No sir.

Q. Were you against it at that meeting?

A. I was.

Q. And did you ever attend any other meeting when that question was up?

A. No sir.

Q. Either a formal meeting of the board of directors or stockholders or otherwise?

A. No sir.

Q. State what, if anything, you ever did to countenance or authorize, permit or sanction the sending out of correspondence, or any representations looking towards the increasing of the capital stock of the Capital National Bank to one million dollars, or any other sum.

A. I didn't know it was done.

Q. And you had no part in any such?

A. No sir; I didn't know it was done.

Q. Did you ever send or permit anyone else to send any letters or prospectus or any literature looking towards the increasing of the capital stock of that bank?

1501 A. No sir.

Q. To a million dollars or any other sum.

A. No sir.

Q. This is said to have occurred in 1890 or 1891. Did you ever see or know of the existence of any letter or prospectus or literature being sent out or handled for the increase of the capital stock of that bank?

A. No sir.

Q. What did you ever do to authorize Mr. Mosher or anyone else acting for the bank, or for you, to send out any such literature or statements of any kind concerning the increase of the capital stock?

A. I never authorized him to do it.

Q. Nor knew of it?

A. No sir, nor knew of it.

Q. It has been said here by Mr. Jones that late in September or early in October of 1890 that he met in the offices of the Capital National Bank at Lincoln, Mr. Outcalt and Mr. Walsh and yourself with regard to his taking stock in the Capital National Bank growing out of that proposed increase of the stock. Did any such transaction ever occur with you Mr. Yates?

A. No sir.

Q. Were you ever present at the time stated, or at any other time?

A. No sir.

Q. When Mr. Jones came to report to you and the men named that he had decided not to purchase any stock, referring to the stock of the Capital National Bank?

A. No sir.

Q. And were you ever present when he reported that he had decided not to purchase the stock, and the three men present, including yourself were talking and trying to induce him to
1502 change his mind and to make the purchase of stock?

A. No sir.

Q. Did you or anyone else, in your presence, ever make any such statements concerning his purchase of any stock in the Capital National Bank?

A. No sir.

Q. And did you, or anyone in your presence, try to induce him to change his mind and to purchase the stock in the bank?

A. No sir.

Q. Did any meeting ever take place in the Capital National Bank when Mr. Mosher and Outcalt, and Jones and yourself were present?

A. No sir.

Q. Or, Mr. Walsh in the company?

A. No sir.

Q. In September or October of 1890 did you know, or had you ever known Mr. Jones?

A. No sir.

Q. Have you seen him here in court during the trial now?

A. He was pointed out to me here, the first time I ever saw him.

Q. Did you see him during the trial of this case in 1902?

A. No sir, he was sick then; they took his deposition down to the house; I didn't go down; I didn't see him.

Q. Did you have any acquaintance with or ever have any conversation with Mr. Jones up to the time of the failure of the bank at all?

A. No sir.

Q. And didn't know him at all?

A. No sir.

Q. Did you ever hear any such conversation with regard to Mr. Jones taking stock or trying to induce him to take stock with any person in the bank at any time?

1503 A. No sir.

Q. In the presence of Mr. Mosher, and Outcalt and Walsh, or whoever the person was, and yourself?

A. No sir.

Q. When you were here at the former trial or at any other time in the progress of this litigation, did you see the letters which are said to have been written to the Comptroller of the Currency and signed by you and the rest of the directors?

A. No sir, I did not.

Q.—So you have had no opportunity to identify the signature

of yourself, or the other directors on either of the letters that were sent to the Comptroller?

A. No sir.

Q. Either that of February 23, 1892, or of September 19, 1892.

A. No sir.

Q. Do you remember the location of the room in which the Capital National Bank did its business?

A. Yes, sir.

Q. And the way the room was divided up?

A. Yes, sir.

Q. Have you noticed the plat that Mr. Thompson used in his testimony here?

A. No sir, I didn't.

Q. Do you remember which way, or where in the banking room was the lobby, the part of the room open for the public?

A. Well they had two openings.

Q. What part of the room was open to the public; whereabouts was it?

A. Well one on "O" street and one on Eleventh street.

Q. Those were the entrances, you mean?

A. Yes sir, the principal opening was on "O" street.

1504 Q. At the diagonal corner of the building?

A. Yes sir.

Q. And where was the other entry?

A. What they called the back entry on Eleventh street.

Q. Farther south from the main entry?

A. Yes sir.

Q. Now what part of the room did those entries go into?

A. Why they went into the lobby.

Q. That was open for the public?

A. For the public, yes sir.

Q. What was there on the west side of that lobby?

A. On the west side was the clerks.

Q. Do you mean the railing, and the desks in the bank?

A. Yes, sir.

Q. With the windows at which business was done.

A. Yes.

Q. How far did that grill and the windows extend south with regard to the entrance on Eleventh street?

A. It was a short room; I should judge it went back there—

Q. Did the desk and the lobby go as far back as the entrance from Eleventh street?

A. Yes sir.

Q. Any farther?

A. No sir, not by my memory.

Q. About even were they?

A. Yes sir.

Q. Now immediately south of that Eleventh street entrance and going off from the lobby what other room or arrangement was there?

A. Why a little room there for the safety deposit boxes, or men that patronized them.

Q. Where was the door that entered that little room?

A. Right in the lobby.

1505 Q. Went from the lobby into the little room.

A. Yes, sir.

Q. And what was there on south of the little room?

A. Why there was a little room there with a desk and a chair, and then came the safety deposit boxes.

Q. And that ended the bank room?

A. Yes, sir.

Q. What did you say there was in that little room entering off of the lobby?

A. Why there was a little table and chair for people that wanted to get their boxes out and open them there securities,—to have things kind of handy.

Q. About how large was that little room?

A. Why it was a small room I should judge about six by seven.

Q. Feet?

A. Yes sir.

Q. Was there room in there for a meeting of four or five or six men?

A. Not unless they moved out the furniture and stood up, no sir, there wasn't.

Q. What was the purpose of that little room?

A. Why it was Mosher's scheme to have a line of safety deposit boxes, and it would help the bank, and it was a very nice thing to give to customers free of rent.

Q. How did they get into it?

A. Each person had a key.

Q. Key to what?

A. To the door which went into this room that went into the safety deposit boxes.

Q. A key from the lobby into the little room?

A. Yes sir.

Q. Did that door lock?

1506 A. Yes sir.

Q. Automatically?

A. Yes sir.

Q. Now during your experience with the bank did you ever attend, or know of there being a meeting of the officers or stockholders, or others interested in the bank, being held in that little room?

A. No sir, it would be impossible.

Q. Where were the meetings of the people interested in the bank held?

A. On the north end.

Q. Did you ever attend or know of a meeting being held in that little room at which Mr. Thompson was present?

A. No sir.

Q. Did you know that the statements which you attested in sub-

stance were reported or published in the newspapers at about the same time the report was sent to the Comptroller?

A. No sir, I didn't.

Q. You didn't know that that was required, nor done?

A. No sir.

Q. Now state what, if anything, you ever knew during the time you were a director of the bank, of printed slips purporting to contain or represent the assets and liabilities of the Capital National Bank, ever being published or sent out from the bank to any of its correspondents,—the Jones National Bank, or any of the plaintiffs here, or other people?

A. I knew nothing about it; didn't know it was done.

Q. State what, if anything, you ever knew about business cards being made purporting to show the assets and liabilities of the Capital National Bank, and its officers and directors, being published or sent out to any of the people in the state, or the correspondent banks of the Capital National Bank?

1507 A. I knew nothing about it.

Q. Did you ever take any part in preparing or authorizing the preparation of any such statements or cards?

A. No sir.

Q. Or in sending them out?

A. No sir.

Q. Did you ever know that it was done?

A. No sir.

Q. State what if anything you ever had to do with, or knew about such cards or statements being published in any of the German papers or Lincoln?

A. Knew nothing about it.

Q. Do you read German?

A. No sir, I don't.

Q. Mr. Yates, referring to these printed copies of what seemed to be the statements of the assets and liabilities, and to the cards, was there ever any meeting when you were present that the printing and sending out of those cards was under discussion or authorized or permitted?

A. No sir.

Q. Did Dr. Hamer ever attend any meeting or be present at any time when that question was up?

Q. When you were present?

A. No sir.

Q. Did you ever see or know anything about the letter of the Comptroller of the Currency to the bank, or to Mosher, of date September 8th, 1891?

1508 A. No sir, not that I remember of.

Q. Mr. Yates, did you know that the Jones National Bank, or the Staplehurst Bank, or the Utica Bank, or Thomas Bailey were depositors in the Capital National Bank at the time of the failure, or at any time?

A. No sir.

Q. Now did you know who examined the books for the Federal government during the time you were interested in the bank?

A. K. K. Hayden was one; whether Mr. Owen was there or not I don't know, and then there was Mr. Griffith.

A. About how long a time was Mr. Griffith the examiner for that bank?

A. Well for several years; up to the time of the failure; when he started in I don't know, but he relieved K. K. Hayden. He was with the State National Bank as cashier.

Q. Where did Mr. Griffith live?

A. At Wahoo.

Q. What opportunity did you have to see him?

A. He was all over the state, and I used to see him quite often on trains.

Q. State what inquiry you ever made of him, and what he reported to you concerning the bank to you?

A. Why I would ask him how the Capital National Bank was and he answered me.

Q. What did he report to you?

A. That it was in good shape, and a fine bank.

1509 Q. Was that more than once that you ever inquired of him?

A. Oh several times, and by the way I was interested in a bank down there at Wilbur and he examined that bank.

Q. Was there any time that you ever inquired of him concerning the Capital National Bank that he intimated to you that it wasn't in good condition?

Q. What, if any, intimation did Mr. Griffith ever give you of any bad condition, or any criticism on the condition or conduct of the bank?

A. Why that the bank was a good bank; he never criticised it at all.

Q. Do you remember whether you made inquiry of Hayden to-?

A. Why it may be that I did, but Mr. Hayden at that time lived in Omaha, and when he came to be cashier of the State National he lived below me, but of course then he wasn't examiner. I didn't meet him so often as I would Mr. Griffith.

Q. Now Mr. Yates, were you at home on Sunday, January 22nd, 1893 after the bank closed its doors on Saturday afternoon?

A. I was.

Q. Now explain what you had to do with the business of the bank on that Sunday, and when it occurred.

A. Well I had Mr. and Mrs. F. E. White of Plattsmouth visiting us,—they were old friends of ours, and somebody at the bank phoned to the house and said there would be a meeting between four
1510 and five o'clock, as I remember, and I went up there.

Q. A meeting of what?

A. Of the directors.

Q. Where did you go?

A. To the Capital National Bank.

Q. As well as you remember who was present at that meeting?

A. Mr. Griffith, and Mosher and Outcalt, and I guess all of the directors; I don't know whether Mr. Thompson was there or not, but Cap. Phillips and Professor Stuart and Mr. Hamer and myself; I think that's all.

Q. Referring to Mr. Thompson's absence; do you remember that he wasn't there; remember of his absence in Indiana, in Terre Haute?

A. Well I had forgot that.

Q. When you say Griffith was there, what Griffith do you mean?

A. Why the bank examiner.

Q. What was the question before the meeting?

A. Why Griffith I think opened the ceremony, you might say. He says "This bank is \$160,000 short" he says, "and if you can make it up you can open up on Monday, and if not it will be closed."

Q. What was said at that meeting about closing the bank or raising \$160,000?

A. Why I says, Mr. Outcalt how is it,—I says, talking to Dick, I wanted to know what he meant by that, if we could raise \$160,000 the bank could continue to run, and he says "We can raise it", but Mr. Mosher says "It's impossible" that is that it would take more than \$160,000 to lift it out, and then when Griffith made this explanation,—he started off with the remark that the bank was completely busted, why everybody there was just paralyzed,—very much surprised.

Q. What did you propose to do about raising the amount, or were you willing to help to raise it?

A. I was willing to help raise it; I was always willing to put in to save the good reputation and to save the bank, and to save the city.

Q. What was Dr. Hamer's attitude on that question?

A. Why they all agreed to it.

Q. What did Griffith say could be done with the bank if \$160,000 could be raised?

Q. Now what was Mosher's remark about the bank going on if the \$160,000 could be raised?

A. He says "You can't do it". By that remark we all understood it would take a great deal more than that; that the bank was looted and it was impossible.

Q. Well what was done then with regard to trying to raise it or what to do with the bank?

A. Why when Mosher made that remark somebody, I don't know who it was, made a motion to adjourn.

Q. Was there any move taken to turn the bank over to the examiner?

A. I suppose so, yes, but I don't know as to that, but when we couldn't raise \$160,000 why then the receiver was in possession.

1512 Q. He was already in possession?

A. Yes sir, he was already in possession.

Q. Not the receiver but the examiner.

A. The examiner, yes sir.

Q. What was your feeling and condition when that was reported to you that the bank couldn't go ahead?

Q. Mr. Yates, how long did you know Dr. Hamer, and when did you become acquainted with him?

A. I must have got acquainted with Dr. Hamer along about '80.

Q. What sort of a man was he physically?

A. Why light and delicate; not very strong.

Q. What was his standing as a man of character and honesty in Lincoln at the time you knew him, and during the existence of the Capital National Bank?

A. He stood very high; everybody liked him.

Q. Something has been said about the executive or discount committee of the bank in the testimony here. Who was that discount committee during most of the history of the bank?

A. Professor Stuart and W. W. Holmes.

Q. Operating with Mosher?

A. Yes sir.

Q. When, if at any time, was Dr. Hamer appointed, or put in the place to act on that committee, if you know?

A. Why I think about a year.—I don't remember whether I was present at that meeting when he was put in to take W. W. Holmes' place.

Q. That was sometime during the last year of the bank's existence?

1513 A. Yes sir.

Q. Do you know whether he ever accepted that position and acted?

A. Oh, I have seen him there and they said he had taken Mr. Holmes' place.

Q. It was said there?

A. Yes sir.

Q. He never said so?

A. No, he never said so to me.

Q. You don't know whether he did take the place actively?

A. No sir.

Q. Now calling your attention to a certificate of the capital stock of the bank No. 119, in the name of E. P. Hamer, and marked as Exhibit "ax", I will ask you whose signatures are at the bottom of that?

A. C. W. Mosher, president, and R. C. Outcalt, cashier.

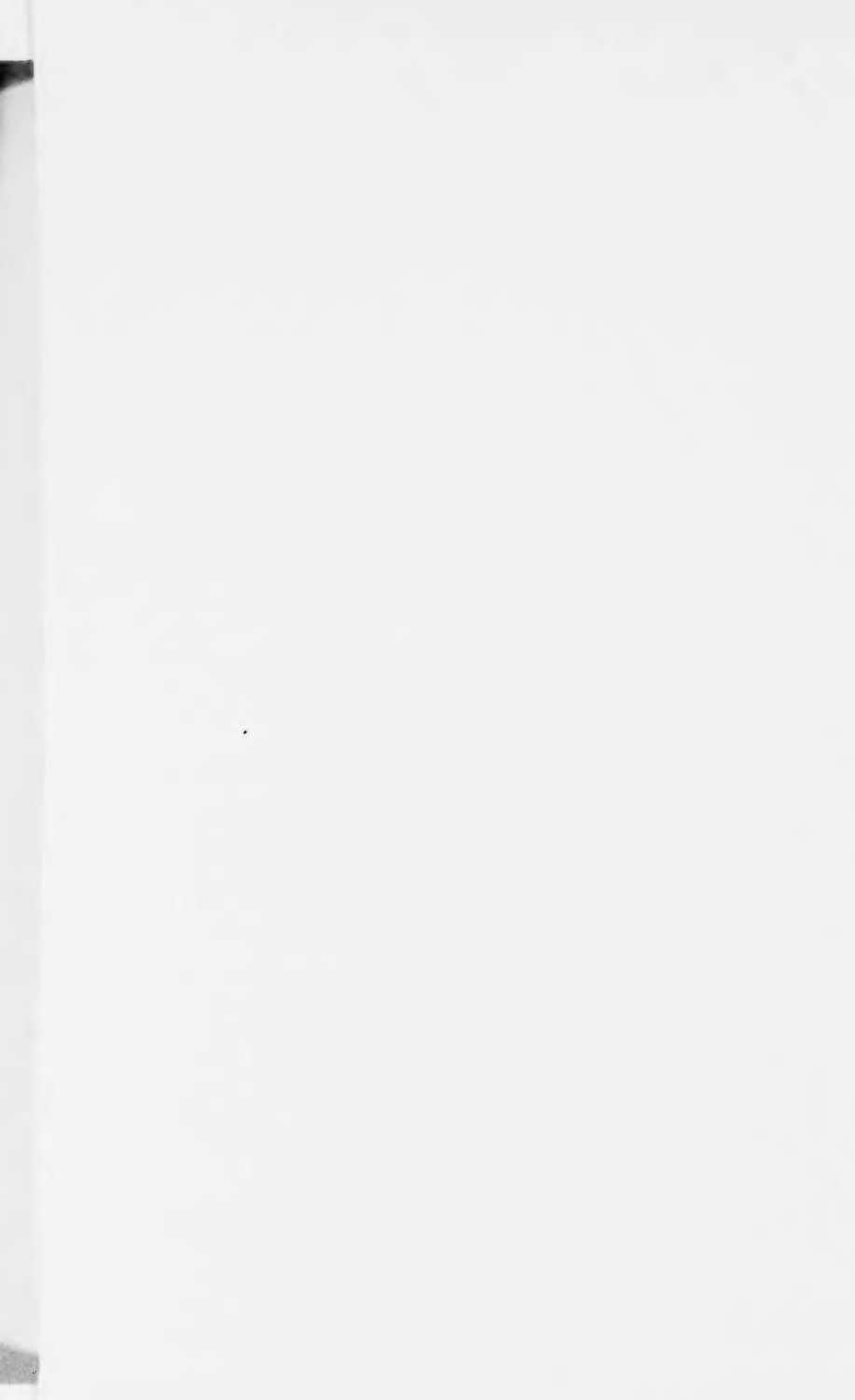
Q. Do you recognize those signatures?

A. Yes sir.

Mr. BISHOP: The defendants offer in evidence Exhibit "ax". Exhibit "ax" received in evidence.

(Copy on next page.)

(Here follows Certificate of Stock, marked Exhibit "ax," at page 1514.)



STATE OF NEBRASKA

THE CAPITAL NATIONAL

BANK

OF LINCOLN, NEB.



No. 119

Shares

This is to Certify that E. P. Hauver is entitled to
Fifteen Shares of **ONE HUNDRED DOLLARS** each
 of the Capital Stock of **THE CAPITAL NATIONAL BANK** transferable only on the
 books of the Bank in person or by Attorney on the surrender of this Certificate.

Seal

Witness the Seal of the Bank and the signatures of the President and Cashier
 this 5th day of Sept. A.D. 1891.

R. C. Outcalt Cashr. C. W. Mosher Pres.

NEBRASKA JOURNAL CO. LINCOLN, NEB.

SHARES \$100 EACH

1515 Q. Mr. Yates I hand you a bunch of receipts, marked Exhibit "AY," consisting of ten sheets, and will ask you whose signature, if you know, is attached to each of those receipts?

A. K. K. Hayden, Receiver.

Q. Do you know Hayden's signature?

A. Yes sir, I am well acquainted with it.

Mr. BISHOP: We want to substitute copies for these. We offer in evidence the ten receipts, marked Exhibit "AY."

Mr. THOMAS: Plaintiffs object as immaterial, irrelevant and no foundation laid.

Objection overruled.

Plaintiffs except.

Exhibit "AY" is received in evidence.

(Copy at next page.)

1516 *Copy of Exhibit ay, Consisting of Ten Sheets.*

2988.

Receiver's Office. Capital National Bank of Lincoln, Neb., K. K. Hayden, Receiver.

LINCOLN, NEBR., Ap'l 18, 1897.

Received of E. P. Hamer fifty eight Dollars (\$58.) on account of stock assessment, being payment in full of amount of assessment and interest.

K. K. HAYDEN, *Receiver.*

Same Here.

LINCOLN, NEB., M'ch 27, 1894.

Received of E. P. Hamer the sum of One hundred dollars on acc't of stock assessment, the same being applied as interest thereon.

K. K. HAYDEN, *Receiver.*

(Same Here.)

LINCOLN, NEB., M'ch 19, 1894.

Received of E. P. Hamer, the sum of two hundred & ninety eight & 50/100 dollars on account of stock assessment.

K. K. HAYDEN, *Receiver.*

(Same Here.)

LINCOLN, NEB., Feb'y 8, 1894.

Received of E. P. Hamer, six hundred & seventy five dollars (\$675) on account of stock assessment.

K. K. HAYDEN, *Receiver.*

(Same Here.)

LINCOLN, NEB., Jan'y 30, '94.

Received of E. P. Hamer on account of stock assessment seven hundred & fifty dollars.

K. K. HAYDEN, *Receiver.*

(Same here.)

LINCOLN, NEB., Dec'r 14/'93.

Received of E. P. Hamer the sum of fourteen hundred dollars \$1,400—on account of stock assessment of this bank.

K. K. HAYDEN, *Receiver*.

(Same here.)

LINCOLN, NEB., Nov. 22/'93.

Received of E. P. Hamer \$400.—Four hundred dollars on acc't of assessment on stock.

K. K. HAYDEN, *Rec'r*.

(Same here.)

LINCOLN, NEB., November 3rd, 1893.

Received of E. P. Hamer on account of stock assessment \$1,385.

K. K. HAYDEN, *Receiver*.

(Same here.)

LINCOLN, NEBRASKA, Sep. 5, 1893.

Received of E. P. Hamer, on acc't of stock assessment eight hundred & fifty dollars (\$850.)

K. K. HAYDEN, *Receiver*.

(Same Here.)

LINCOLN, NEBRASKA, July 10, 1893.

Received of E. P. Hamer the sum of thirty two hundred & Forty one & 50/100 Dollars on account of assessment of one hundred per cent on stock of the Capital National Bank owned by him.

K. K. HAYDEN, *Receiver*.

2539.

700.

2.50

3241.50

Exhibit "AY" Yates-35.

(Copy of ten receipts from Hayden Receiver to E. P. Hamer, here.)

1517 Cross-examination.

By Mr. THOMAS:

Q. How old are you Mr. Yates?

A. I was born November 1st, '37; I will be 74 years old the first of November.

Q. When did you say you went into the employ of the Burlington Railroad?

A. I started in in 1833, in Burlington, Iowa.

Q. And in what occupation were you engaged prior to that time?

A. Before that time?

Q. Yes sir.

A. I was on the New York Central, as ticket agent and operator.

Q. How long were you engaged in that occupation?

A. Oh, I don't know; I worked up to operator and express agent, and operator and freight clerk, and then I was promoted to be operator and ticket agent; I started in about '60 to learn telegraphing.

Q. That's when you started to learn the business of telegraphing?

A. Yes sir, and then I got an office at \$20 a month,—\$20.84 a month—\$250.00 a year.

Q. And you have been engaged in that line of work ever since until you retired a few years ago?

A. Yes sir.

Q. I think you said you were dispatcher of the Burlington at Lincoln for a while?

A. Yes sir.

Q. For how long?

A. I built all the lines west of Ottumwa, Iowa, and when the C. B. & Q. absorbed the B. & M. of Iowa I came to Nebraska 1518 with Mr. Perkins, he was vice-president, and Mr. Morse was superintendent with headquarters at Plattsmouth, and I came out there as dispatcher and superintendent of telegraph,—that was in 1873.

Q. How long did you continue to be dispatcher and superintendent of telegraph?

A. The road then took in what was called the Midland Pacific, running from Brownville to Seward, and my headquarters was moved to Lincoln to operate the road without any extra expenses, so I acted as dispatcher then until the system got so large I couldn't give it proper attention, and I took the matter up and it was decided to turn the dispatching over to the superintendents and let them hire dispatchers, so then I was just superintendent of telegraph of the entire system. I built the lines into Billings, and Denver and Cheyenne, and so forth.

Q. And you continued to be superintendent of telegraph until when?

A. Until 1905.

Q. Now during the period of your residence in Nebraska you have been interested in various banks, have you?

A. Why in two banks; the bank at Wilbur and the Capital National Bank.

Q. Are those the only two?

A. Well I think I was interested in the bank there at Ashland,—I don't remember the name of it now; I was a stockholder only a short time when the man wanted to kind of stuff the deposits and I got out; I don't remember the name of the cashier. I think I got in that bank through Mr. John R. Clark.

Q. When he was trying to stuff the deposits you quit?

A. Well the truth of the matter was they were trying to freeze out Fitzgerald, and I thought if they would freeze out Fitzgerald they would me, and the next bank I got in through Mr. Clark was

the bank at Wilbur: Mr. Tidball I think was the president,
1519 and then I got a little experience there.

Q. What was the name of the Wilbur bank?

A. Well I don't remember now; and then they got in some forged paper.

Mr. BISHOP: That answers the question.

Q. You say they got some forged paper in on you in the Wilbur bank?

Q. You became a stockholder in the Capital National Bank in June '84, did you?

A. I think so, yes.

Q. And you remained a director from '84 until the close of the Capital National Bank?

A. Yes, sir.

Q. You were not present at the meeting when the Marsh National Bank was changed to the Capital National Bank?

A. No sir.

Q. Weren't you present at the stockholders' meeting?

A. Not that I remember of; I don't think I was.

Q. And you didn't know anything about what assets they took over from the old bank?

A. No sir.

Q. Never heard anything about it?

A. No sir.

Q. Never heard about the Donnell, Lawson & Simpson account?

A. No sir.

Q. Nor about any of the Marsh paper?

A. No sir.

Q. Nor any of the Western Manufacturing Company paper?

A. No sir.

1520 Q. Nor any of Mosher's paper?

A. No sir.

Q. Nor Outcalt's paper?

A. No sir.

Q. In fact you didn't know anything about any of the paper that was in that bank?

A. No sir.

Q. Didn't know there was any director's paper in the bank except your own?

A. No sir.

Q. You say you didn't even know E. Hurlbut, Jr.?

A. No sir.

Q. Didn't know that the bank ever had any losses of any kind?

A. No sir.

Q. That never came to your attention in any way?

A. No sir.

Q. Never was discussed at a director's meeting?

A. No sir.

Q. You say you never examined any paper of the bank?

A. No sir.

Q. Never looked at a note.

A. No sir.

Q. Or any of the documents of the bank at all?

A. No sir.

Q. Well then you hadn't very much to do with the directing of the bank had you?

A. Hadn't anything.

Q. I suppose you attended the meetings when it came time for the dividends and voted Aye?

A. Oh, no, there was lots of times they passed dividends that I wasn't there.

1521 Q. But up to the time the bank closed you thought it was a very good bank.

A. Yes,—yes sir.

Q. Had always been a good dividend payer?

A. Well, yes, but not any better than others,—the First National.

Q. And you had never had any intimation of any kind that the bank was in a bad way until that Sunday?

A. No sir.

Q. You thought the bank was getting along prosperously and making money?

A. Yes sir, and in safe, judicious management.

Q. And it continued to pay dividends right along regularly?

A. Yes sir.

Q. And when you attended meeting of the directors, I think you said they were held in the front part of the bank?

A. Always.

Q. Never in the back part?

A. Not when I was there.

Q. You never were in that little back room that has been testified to in your life?

A. No sir.

Q. And never back of the counter in the bank?

A. No sir.

Q. Never at the south end of the bank?

A. No sir. I never went in there.

Q. The only place in the bank you were ever in was the front end,—what they call the "O" street front end, where Mr. Mosher and Outcalt had their desks?

A. Yes, sir.

Q. You never remember of the directors discussing any letter from the Comptroller, you say?

A. No sir, I never was present if they did.

1522 Q. Never heard about any letters from the Comptroller criticising the condition of the bank in any way?

A. Not that I remember of.

Q. Well you think you would remember a thing of that kind, don't you?

A. Oh, yes.

Q. If there had been anything of that kind, you had such a good opinion of the bank,—if there had been any criticism by the Comptroller, it would have impressed itself upon your mind?

A. I should think so.

Q. But you think nothing of that kind every happened?

A. That is my impression, yes, sir.

Q. And you don't recall of having ever met Mr. Jones?

A. I never met Mr. Jones.

Q. You are quite sure of that?

A. Yes, sir.

Q. To refresh your recollection as to a meeting in the Fall of 1890, I will ask you if you were not at the bank one day when Mr. Jones was there—Mr. H. T. Jones—, and in the course of the conversation you and Mr. Jones were talking to each other, and the subject that came up for discussion was the fact of your lameness?

A. Oh, I don't know about that; I don't remember anything of that kind.

Q. Well it is true that you are a little lame in one limb?

A. Yes, sir.

Q. And Mr. Jones is to-, isn't he?

A. Yes, sir.

Q. And wasn't that discussed between you?

A. That may be. I was talking with this gentleman (Indicating) here; one lame man if he has got a new kind of shoe he takes pity on a man and tells him about the new shoe.

Q. You don't recall of having such a conversation with Mr. Jones at the Capital National Bank?

A. Oh, I don't recall it; it might be that it occurred because one lame man has no hesitancy about speaking to another lame man, if he has got an improvement.

Q. Did you know that Mr. Thompson had sold his stock in the Fall of '91?

A. No, sir, I did not.

Q. That never came to your knowledge?

A. That never came to my knowledge.

Q. You were present at the trial of this case,—at the former trial?

A. Yes, sir, I was up here.

Q. And you say you didn't get to inspect the original letters of the Comptroller's that have been referred to?

A. No, sir.

Q. Your attorneys did, did they not?

A. I suppose they did.

Q. You remember of the million dollar bank scheme, do you?

A. As I said before, at a meeting the thing was broached and I was very much surprised, and didn't believe in it.

Q. Now do you say that you never attended a meeting when any of the bills receivable—paper of the bank was taken up and looked over and discussed?

A. No, sir, not when I was at the meeting.

Q. You didn't know of any of this Western Manufacturing Company paper?

A. No, sir.

Q. Of which Mr. Hurlbut was manager?

A. No, sir.

1524 Q. Well did you sign any reports of the bank's condition?

A. You mean those statements?

Q. Yes, sir.

A. Why when I was in the office there, if Hal Young or some other employe of the bank would bring one of the statements down, I would see it was signed and attested by Mosher and Outcalt, and in good faith I signed it.

Q. And that's about all you knew about it?

A. That's about all I knew about it; I had my confidence in those people, and in the examiner of the bank.

Q. You never made an investigation yourself, as to what the bank had in the way of assets?

A. No, sir.

Q. Never looked over the Bills Receivable?

A. No sir.

Q. Never looked over its assets?

A. No sir. Never was behind the counter.

Q. Never counted its cash?

A. Oh, no.

Q. Never attempted to look over its depositors?

A. No sir, I had my faith in the officers of the bank.

Q. You never made any inquiry of that kind?

A. No sir.

Q. I suppose you had no knowledge whatever of its financial condition?

A. Oh, no.

Q. And of course you were aware of that fact that you didn't know anything about it, of your own knowledge?

A. Oh yes,—yes sir,—but the truth of the matter was Mr. Thomas that I was a pretty busy man, and was out on the road about three fourths of the time, and when I came in I suppose if they wanted anything I would have signed it.

1525 Q. And you didn't know that those reports were being published in the papers?

A. No sir, not to my knowledge; I may have casually noticed it, but I wasn't looking for advertisements, you know.

Q. But then you- eye will catch advertisements in a paper?

A. Oh I may have seen them and I might not have seen them. I wouldn't say.

Q. And what do you say as to whether the bank was carrying a card in the paper?

A. I didn't know anything about it.

Q. You took the daily papers?

A. Yes sir, I took all the daily papers.

Q. And have ever since you have lived there?

A. Yes sir.

Q. Do you say that the bank didn't carry an advertisement?

A. I don't say that. It wasn't done by my notice or consent.

Q. And you don't say that they didn't publish a card in which

they advertised their capital stock, and surplus and the names of all of the directors?

A. No sir, I don't know; I wouldn't say I never saw it.

Q. And your recollection is that you don't remember of any discussion at a directors' meeting in regard to any of the paper?

A. Oh, no.

Q. Never was anything of that kind?

A. Oh, no.

Q. What educational opportunities had you, Mr. Yates?

A. Why just ordinary common school education.

Q. Study bookkeeping when you were a boy?

A. No sir.

Q. Did you ever in any of the positions you have occupied that the railroad has been your employer,—have you had to keep any accounts?

1526 A. I had to, to a certain extent.

Q. To what extent?

A. Why for instance get a Bill of Lading to Judge Thomas one case of sugar, 40¢, and things of that kind; that's railroad bookkeeping.

Q. Your experience has been in railroad bookkeeping?

A. All together, yes sir.

Q. You have had some experience in that line?

A. Yes sir, I have been in several different departments, that is, in the freight department, and ticket department, selling tickets and acting as their agent, and so forth.

Q. And in those departments it necessitated a certain amount of bookkeeping?

A. Oh yes; it is very simple though.

Q. All you have is just the debit and credit entries.

A. Why in the case of sugar, for instance, one case sugar, 100 pounds, 40¢, that's all there is to it. Well then I would send it to the treasurer and make a statement with the remittance.

Q. That is, when you receive the money on freight, that would be entered on your books as a charge to yourself, and when remitted to the treasurer you give yourself credit and charge it up to the treasurer.

A. Yes, sir.

Q. And that has been about the extent of your experience?

A. That's all.

Q. Where were you ticket agent?

A. Fonda, New York.

Q. And where were you in the freight department?

A. Down here, and also at Ottumwa, Iowa.

Q. Now I hand you Exhibit "ai", p. 1140 and will ask you if you have ever seen a statement similar to this one?

1527 A. I don't remember of ever seeing one of these.

Q. Did you ever see anything like that?

A. No sir.

Q. Never did?

A. No sir.

— Never have seen a statement like that that the banks get out?

A. Not unless some person would just casually say "Here's a statement" and I would look at it and that's all.

Q. Now it's true that you have seen cards like that frequently isn't it.

A. It may be, I couldn't say.

Q. And isn't it true that all the banks get those out?

A. No sir,—I don't know.

Q. And you don't know that you have ever seen anything like that before?

A. Oh, I won't say that; it may be that I have, but as a rule I don't see them.

Q. Didn't your bank, in which you were interested in Wilbur ever send you statements like this?

A. No sir.

Q. What banks are you interested in now?

1528 A. Not interested at all. I have had my experience.

Q. And you have never received from the banks in which you deposited, you have never received any statements similar to this showing their resources and liabilities?

A. No sir.

Q. Never got one?

A. Not that I knew of.

Q. Never knew of any bank in Lincoln issuing anything like this?

A. Not that I know of.

Q. Never knew of the Capital National Bank ever issuing any statements?

A. Not that I know of.

Q. And you didn't even see those published in the newspapers?

A. No sir.

Q. Didn't know anything about them?

A. No sir.

Q. Well do you understand what that statement means?

A. Yes sir, it is the liabilities I suppose, of the United States National Bank of Omaha.

Q. Do you understand the meaning of those statements,—can you read it understandingly?

A. Why to a certain extent; they have got here loans six million; they've got a capital stock of \$600,000; Surplus and profits 764 thou-and. Yes I should think to a certain extent I could understand that, but I couldn't figure out what the stock was worth.

Q. Assuming that all the resources were worth what they
1529 purport to be, the face value, couldn't you tell about what that stock ought to be worth?

A. No sir, I couldn't.

Q. Now calling your attention to Exhibit X-988, could you read a statement of that character and understand that?

A. Oh I suppose I could go to work and figure it out, but a thing of that kind (indicating) would be more plain than a thing like this.

Q. Why?

A. Why—oh, I suppose I could take time and figure it out.

Q. What's the difference between the two?

A. One is condensed and that's about all.

Q. One goes into detail a trifle more than the other?

A. Yes sir, a little more in detail.

Q. And could you understand it if it were in this form (indicating) still more in detail, giving the assets in one column and the liabilities in the other, calling your attention to Exhibit X-1041?

A. It's a good deal like Greek to me Mr. Thomas, because I am no expert accountant.

Q. You have never seen anything like that before have you?

A. No sir.

Q. And you wouldn't have any idea how to figure that out, would you?

A. No sir.

Q. That is, take the first item here where it says capital stock \$300,000. Would you know what that indicates?

A. Why that the capital stock was \$300,000.

Q. And the United States bonds, \$50,000, would you understand what that means?

A. Why yes,—here's the capital and the surplus, that would be \$316,000.

1530 Q. And the third item, do you know what that means?

A. I wouldn't know whether that belonged to the bank, or part of this capital business.

Q. That might be a liability you think?

A. Yes, sir.

Q. You know the item of cash?

A. I would understand that was what they had on hand.

Q. Would that mean what they had on hand, or owed it to some body?

A. I should judge that they had it on hand.

Q. What makes you think that?

A. It says cash here.

Q. And it says Bills Receivable \$787,531.50. What would you understand by that?

A. I should think that would be the notes payable to the bank.

Q. That would be your inference?

A. Yes, sir.

Q. And in the account, Undivided Profits, in this other column \$30.18 what would you understand by that?

A. That the bank was ahead \$30.18.

Q. And the Rediscount account \$10,000; what would you understand by that?

A. I should think by that the bank had rediscounted paper in New York, or Chicago, or some other place to the amount of \$10,000.

Q. And the expense item, you would understand that.

A. The expense account is the expenses of the bank.

Q. And the deposit account?

A. It's the money that is put in the bank.

Q. By the various depositors.

A. Yes sir.

1531 Q. Now Mr. Yates, you never knew that the bank carried any real estate either, did you?

A. No sir.

Q. And didn't know that it carried any overdrafts?

A. No sir, didn't know anything about it.

Q. Or rddiscounts?

A. No sir.

Q. Where were you the Saturday before the bank failure?

A. I was there in Lincoln.

Q. Were you at the bank that day?

A. Well I don't know; I have got kind of mixed up on the dates; it run- in my mind that I put a deposit in the bank that day, but it must have been the Saturday previous.

Q. When was your last deposit?

A. Why the books here show it was the 13th; but it got in my head that it was the 21st, but they say I am wrong.

Q. At the time you made the deposit, you hadn't any intimation then that there was anything wrong with the bank?

A. Oh, no.

Q. And it was sometime,—a day or two afterward that you found it out?

A. Yes sir, several days.

Q. Mr. Yates, do you recall of having been a witness in the Circuit Court of the United States for the District of Nebraska, in which Kent K. Hayden was the plaintiff and Mr. Thompson, and yourself and others were the defendants?

A. I don't.

Q. I will ask you to examine and see if that is your signature, (Showing writing to the witness.)?

A. Yes sir, that's my signature.

Q. You don't recall of ever having been a witness in that case?

A. No sir, but then I guess that's all straight goods.

1532 Q. The signature on page 87 is your signature?

A. Yes, sir, that's my signature.

Q. I will ask you Mr. Yates, if in the case to which I have referred, if you did not testify as a witness, and that this question was asked: "About how often would you meet with *with* the directors?" to which you answered, "Why if I happened to be intown when they declared a dividend, generally in June and December,—just before a dividend was declared." Do you remember of that question being asked you?

A. I guess if I answered it then it is all right. I don't remember it now.

Q. And the following question was asked "And the purpose and object of your meeting was simply to meet and declare a dividend?" To which you made answer as follows: "Oh, they would talk over matters and things in the bank and charge off a certain amount of paper and say how the loans was and if they made a loss it would be charged off."?

A. I guess that's correct.

Q. You think you so testified at that time?

A. Yes, sir, oh, yes.

Q. And following that wasn't this question asked, "Do you mean to say that of your personal knowledge any bad debts were ever charged off prior to 1892?" To which you answered, "Yes, sir, there had been; I supposed they were charged off, they said they would meet with a loss." Was that question asked and did you so answer at that time?

A. I must have answered it that way, but I must have got excited or rattled.

Q. And was the following question asked you, "Can you remember of any having been charged off?" to which you answered, "I never saw the books, I supposed they had been, we talked the matter over the way they had done in different banks I have been connected with. Of course I did not go to work and see them 1533 charged off."

A. That's correct.

Q. The next question, "Can you give any that were mentioned at any of those meetings?" Answer: "It is so long ago Mr. Lambertson, I could not do that." Question: "Was your attention called to any large losses?" Answer: "Why we talked the matter over there about the Small loan and Mosher was inclined to regret that he did not submit to the loss; he sued the man; I think it was something like \$15,000, and he regretted that he had not submitted to the loss instead of putting any more money into it. Phillips knew all about the land and thought it would pay out."

A. Yes, sir. Then I am mistaken about this other. I don't remember this at all, but if I was there and said that I said it.

Q. You can look over it and see if it is your signature?

A. I take your word for it.

Q. You think you may have known something about that paper then?

A. I should judge by that I knew something about it.

Q. Now you remember Mr. Yates of being a witness at the former trial of this case, don't you?

A. Yes, sir, I was here.

Q. Now I will ask you if at that time some questions were not asked you concerning meetings of the directory, and what was done, and concerning the investigations of the assets and things of that character, and if at that time this question wasn't asked you, "I am asking you at a meeting when you were there, whether inquiries were made of this committee, and whether they reported what they had done?" To which you answered, "Yes, sir." Then the further question was asked, "Now I will ask you to state what was the character of such investigation and report with reference to the character of the assets?" to which you answered: "There was general discussion at the meetings in regard to the paper, and 1534 they would always take up each piece of paper and comment upon it, and claimed it was all right." Did you so testify at the former trial?

A. I should judge so, yes, sir.

Q. Then your memory doesn't serve you well when you say now that wasn't done?

A. Well you see this was long ago. This was eight years ago. I don't intend to mislead you in any way, shape or manner.

Q. I believe you said in your examination this morning that you would have raised a row if you had known that Mosher and Outcalt were borrowing money?

A. What I understood by that was if I had understood that they were borrowing such large amounts of money as was reported here at the trial.

Q. Did you know anything about the loans that were being made to E. W. Mosher, or under the name of Ed Mosher?

A. No, sir, I didn't know E. W. Mosher.

Q. And you didn't know that the bank was loaning any money through him over in York and the western counties?

A. No, sir. All I knew about E. W. Mosher, I saw him one day in the bank, and I says to some gentleman, "Who is that gentleman in there with Mosher," and he says, "That's Mosher's brother," and that's the first time I ever saw him, and the last time, I guess.

Q. Now Mr. Yates, do you recall of a case in the District Court of Lancaster county in which Henry Gerner a stockholder of the Capital National Bank was plaintiff, and Mr. Mosher and Mr. Thompson and you and others were defendants?

A. Yes, sir, I knew we had such a case.

Q. And you were a witness in that case?

A. I should judge so.

1535 Q. And you remember of Mr. Rose, now in this case, cross-examining you in that suit?

A. I don't know; he made it kind of warm for us, I guess.

Q. As I understand you to say that up until just about the close of the bank you hadn't any intimation of anything wrong at all?

A. No sir.

Q. And supposed the bank was flourishing as usual?

A. Yes sir. Mr. A. P. S. Stuart traded his stock off to Mr. C. J. Ernst, now assistant treasurer of the Burlington, and he came to me and asked what the stock was worth, and I said it was worth a good \$1.25. I don't know what time it was Mr. Stuart sold his stock, but it was only a short time before the bank failed.

Q. Well up to the last of the year 1892, you had never had any intimation of any reverses of the bank, or that it had suffered any losses?

A. No sir.

Q. Never had been anything lost that you ever knew of?

A. Not that I ever knew of.

Q. You didn't know that the capital had been impaired?

A. No sir.

Q. Well didn't you know that the bank had passed a dividend during the year 1892, or was that true?

A. Well I don't know,—Griffith or somebody told me,—I guess it was Mosher that they hadn't been attending to business very

close; that they had outside business and hadn't attended to business.

Q. But so far as you know you always got your dividends?

A. Oh, it was paid, sure.

Q. And you didn't know where the money came from that paid it?

A. No, sir, but I supposed everything was legitimate.

1536 Q. Well at this Gerner case, to which I have referred in which Mr. Rose cross examined you, didn't he ask you; "You knew that the bank had passed one dividend?" to which you answered "Yes sir." Then the following question was asked you, "You knew previously it had dropped its dividends down", to which you answered "Yes sir". Do you remember that?

A. I suppose if I answered that way, it was all right.

Q. Well it is true that at the director's meeting— isn't it true, Mr. Yates, that the bank hadn't declared any dividends in December, 1892?

A. I don't remember.

Q. And isn't it true that you knew that the undivided profits of the bank,—the undivided profit account had been wiped off?

A. No sir.

Q. And that part of the six months paper had been cancelled or supposed to have been cancelled?

A. Not that I remember of?

Q. But you knew there was no dividend to be declared for six months ending December 31, 1892?

A. I didn't know it until they had a meeting there,—why I don't know,—

Q. Now calling your specific attention to this testimony, I will ask you if in the trial of the Gerner case you were not asked by Mr. Rose the following questions, to which you made the following answers:— Question—"You knew that the bank had passed one dividend." Answer—Yes sir. Q. "You knew previously it had dropped its dividends down?" To which you answered "Yes sir." And that the undivided profit account had been wiped off?" To which you answered "Yes sir, to a certain extent" And part of the six months paper had been in that way cancelled?" Answer—

"Yes sir, the same as banks as doing today." Question— 1537 "You knew those facts?" Answer: "Yes sir". You knew there was no dividend to be declared for the six months ending December 31, '92, didn't you?" To which you answered "Yes, sir." "You were present, you said at the January meeting, '93, the stockholders meeting?" Answer—"Yes sir". "And at the directors meeting which was held the same night?" Answer—"yes sir." "What day was that, about January 10th or 9th?" Answer—"I can't fix the exact date." Question—"About January 9th?" Answer—"I should think so". "And about ten days before the bank failure?" Answer—"It must have been about that". Now wasn't there a statement made in the presence of the directors, at the directors meeting at that time, by Captain Phillips that the capital of the bank was impaired \$50,000, and didn't he give his figures

and estimates" and you said "I don't remember". "You wouldn't say that didn't take place?" Answer—"No sir, I wouldn't."

Q. Now do you remember of those questions being asked you by Mr. Rose, and you making answers in that way?

A. No sir, but I suppose they're al- right. I don't remember of it now.

Q. But you think you may have testified as I say?

A. Oh, if it is there.

Q. And wasn't the following question asked you:—At the January meeting, immediately after the election of officers isn't it a fact that there was a discussion concerning the impairment of the capital stock of this bank? To which you answered—"Well, I don't remember about it so much,—they said they had some bad paper and they were going to make an arrangement about liquidating it, and raise the money, or something of that kind". Do you remember that?

A. No sir, but I suppose it is al- right.

1538 Wasn't the following question asked you:—"Now you say when you signed these statements that you have seen here that you believed them to be true' and you said "Yes sir"?"

A. Yes sir.

Q. Question—"And you intended when they were published and circulated in the community that other people would believe them to be true", to which you answered "I didn't know,——" Question—"You knew that in actual practice the reports were published in the newspapers?" Answer—"Yes sir, I have seen them in the papers".

A. Yes sir.

Q. Question—"You knew that was the usual custom to publish the same reports that were sent to the Comptroller?" Answer—"I don't know so much about that—I have seen the reports in the paper".

A. Well I suppose following out the requirements of the law.

Q. Question—"And the reports you saw in the papers contained the signatures of the attesting directors?" Answer—"Yes sir". Question—"And copy of the oath of the cashier?" Answer—"Yes sir, I have seen those". Question—"All that you saw of this character of reports in the paper, had the same authenticity so far as the attestation of the directors was concerned and the sworn statement of the cashier as those that went to the Comptroller, hadn't they?" To which you answered "Yes sir". Question—"You knew when you signed those statements that they would appear in the newspapers over your signature?" Answer—"No sir, I didn't know about that". Question—"You knew that such had been the case heretofore?" Answer—"Yes sir." "You had seen your signature in the paper before that, hadn't you?" Answer—"I am not certain about that". Question—"You will not say you intended it to be published anyhow?" Answer—"No sir". Question—"You will not say you didn't intend it, will you?" Answer—"No sir."

1539 Q. Do you remember of those questions having been asked?

A. No sir, I don't, but if it's on the record there, why it's alright.

Q. You wouldn't say you didn't so testify would you Mr. Yates?

A. Oh no, no.

Q. And you think now that you did?

A. I should judge so by that.

Q. You remember of Mr. Pose examining you in that case?

A. Yes sir, I remember Mr. Pose.

Q. As you say he made it hot for you.

A. Well he was working for his client all right.

Q. You remember of being present at that meeting of January 10th, 1893, don't you, Mr. Yates?

A. Why I have a distinct recollection of it, yes sir.

Q. That you were there at that meeting?

A. Yes, sir.

Q. And at that time you voted a proxy of Cal Thompson?

A. I always had Cal Thompson's proxy.

Q. The instrument I hadⁿ you is Mr. Thompson's proxy?

A. Yes sir, that's it.

Q. And that is the proxy authorizing you to appear for him at the meeting of January 10th, 1893?

A. Yes sir, that's correct.

Q. I think you said you were acquainted with both Mosher and Outcalt before you became a stockholder of the Capital National Bank?

A. Well I knew them casually, I might have met them on the street, but I didn't know anything about them personally, no sir.

Q. You knew Mr. Outcalt?

A. I knew him better than I did Mr. Mosher.

1540 Q. He had been a bookkeeper in another bank there in Lincoln?

A. In the old State National, I think.

Q. You knew him there?

A. Only by hearsay. Mr. Richards told me he had Mr. Outcalt as bookkeeper, and he was one of the finest in the state.

Q. And since I have called your attention to this other testimony you remember of some statements being in the newspapers, don't you, concerning the condition of the bank?

A. No sir, I don't.

Q. Don't remember it, even now?

A. I don't remember of any statements in the newspapers, no sir.

Q. How did you happen to talk to these bank examiners, Mr. Yates?

A. Why I was interested in the stability and prosperity of the Capital National Bank.

Q. It never suggested itself to you to look over the notes yourself?

A. Oh, I wouldn't know anything about it.—I couldn't tell. Those people were paid for it, and I supposed they were tending to business.

Q. And you couldn't have looked over the bank's notes and told anything about them, you think?

A. No sir.

Q. The examiners told you it was fine?

A. Yes sir, a clean, prosperous bank, well managed, and so forth.

Q. And you say you didn't know anything about the director's letters that were written to the Comptroller in answer to some inquiries?

A. Not that I remember of, no sir.

1541 Q. You will not say that you didn't sign those?

A. I will say this, that I wasn't present at a meeting of the directors there when they canvassed the thing over. It may be like those reports that they would bring the letter down to me and I signed it, but I wasn't present when they had the meeting.

Q. But you wouldn't say that you did not sign those letters to the Comptroller?

A. Well I didn't sign it there. If they had a meeting and they brought that letter to me, and said they had a meeting and wanted me to sign it, I suppose I would have signed it, but I don't have any recollection of signing that letter, or of ever seeing it.

Q. Of course it has been so long ago that you might have forgotten about it, Mr. Yates?

A. Well that might be; of course it is eighteen years ago.

Q. And it is possible that you might have been present and heard those things and forgotten it by this time.

A. Well a thing of that kind, if it had come from the Comptroller, why I would have been alarmed and taken the matter up with my friend Captain Phillips, and we would probably have done something.

Mr. THOMAS: That's all.

Redirect examination

By Mr. BISHOP:

Q. They have asked you about meeting where the paper of the bank was taken up piece by piece and looked over. Was that all the notes and valuable paper of the bank, or only some of it?

A. Only some of it.

Q. And that was by that discount committee?

A. Yes, sir.

1542 Q. And the question was up as to whether somebody was good or not?

A. Yes, sir.

Q. Where their knowledge was not apparently sufficient?

A. Yes, sir.

Q. Did you have any knowledge that the \$300,000 of the capital of the bank was spent, or wasted or lost, at the time of the meeting in January?

A. No sir.

Q. Now Mr. Thomas asked you the question if you had ever been in that little room at the south end of the lobby of the bank.

A. Yes sir.

Q. And you answered that you hadn't. Is that true?

- A. Oh I have been in that safety deposit room.
Q. And in that little room next to it?
A. Oh yes,—I didn't understand that.
Q. You meant you had never been there at any meeting?
A. Never at any meeting, no sir.
Q. You had a key to that room?
A. I had a key, yes sir.
Q. And used the vault?
A. And used the vault.
Q. And used the furniture in there?
A. Yes sir.

Mr. BISHOP: That's all.

1543 Recross-examination.

By Mr. THOMAS:

Q. Mr. Yates, you say the discount committee would handle this paper, piece by piece,—only a part of the paper of the bank?

A. Well say half a dozen notes,—that's what I mean,—John Jones, Smith or Brown,—that's what I mean.

Q. I thought you said you hadn't any memory of that sort of thing occurring?

A. Well that thing there (indicating) it appears that there I said I did. You see it is a great many years ago, and I tried to forget the whole blamed thing, but the chances are that this discount board took this paper up because there is always more or less bad paper in a bank, and the discount board it's their duty to discuss the matter.

Q. Then according to your memory now, the discount committee went over all the paper of the bank?

A. I don't think all of it.

Q. And if there was any paper that wasn't very good they could bring that up before the board, is that the idea?

A. Yes, and discuss what should be done, for instance, they had made a loan of \$500 or \$1,000 to John Jones and wanted to know what to do with it.

Q. If they were in doubt as to whether John was good or not?

A. Yes sir, they would charge it off.

Q. Or bring it up before the board.

Q. Yes sir, or discuss its pro and con and if somebody said he was no good at all why charge it off.

Q. Well was that the practice that was generally pursued there?

A. Why I guess that is the way it is done with all banks, but I never had any experience before.

1544-1550 Q. Well, I mean with reference to this bank?

A. Well I suppose so.

Q. Are you just supposing so?

A. Well they didn't have very much of that paper, Mr. Thomas.

Q. Which paper?

A. This bad paper, about the discount board taking it up, I don't remember of more than once or twice.

Q. You mean you don't remember of the discount committee making a report more than once or twice?

A. Yes, sir, but in the majority of cases they claimed they had a clean bank.

Q. A good janitor.

A. Yes sir, and good generally; they thought they had one of the best banks in the state, and everybody was proud of being connected with it.

Q. I think you said that since that you have been trying to forget as much of it as you can?

A. Yes sir.

Mr. THOMAS: That's all.

Witness excused.

* * * * *

1551 Mr. NORVAL: Plaintiffs now offer in evidence the Cross-Examination of the witness Sanford, as found in the former Bill of Exceptions of this case, Volume 1, page 316.

Cross-examination of witness SANFORD read in evidence.

By Mr. NORVAL:

Q. What is your address at Council Bluffs?

A. My residence address?

Q. Yes, sir.

A. 204 South First street.

Q. And your business address?

A. Box 62.

Q. What is the number of your office where you work?

A. I travel on the road.

Q. Who do you travel for?

A. The Aultman Taylor Machinery Company.

Q. You say you were sent to York by the Capital National Bank?

A. Yes, sir.

Q. To take charge of their property matters at York and vicinity?

A. Yes sir.

Q. And you had charge of all securities and loans and property of the bank that E. W. Mosher had made is that it?

A. Yes sir.

Q. You say his bills receivable a great many of them, had been taken in the name of the bank, on the bank's notes, blank notes?

A. There were a few of them, I couldn't say just how many.

Q. And some had been taken in the name of E. W. Mosher and endorsed to the bank?

A. Yes sir.

1552 Q. And all of them were held by the bank when you were sent out there?

A. Yes sir.

Q. And you went out there for the bank?

A. Yes, sir.

Q. And I believe you said there were a number of judgments there and you didn't do anything with them because they were worthless?

A. Well now I am not much posted on the judgments.

Q. Wasn't that what you testified to?

A. I said in making the inventory of the assets of the institution, that I didn't invoice these judgments, as I didn't consider them of any value.

Q. You were there to investigate and see what condition the bank's affairs were in, and to realize on its assets?

A. Yes, sir.

Q. If there had been any value to the judgments you would have undertaken to have collected them?

A. Yes sir,—they were very small in amount.

Q. And the personal property, the horse ranch you spoke of, and the office furniture, you say they sold for something like \$10,000?

A. I think so. I don't think the office furniture brought over \$50.

Q. Did you sell that property?

A. What property?

Q. The horses that you say brought about \$10,000?

A. No sir, the Receiver sold them after I left the bank.

Q. Do you know what became of the proceeds of that?

A. I wouldn't be in a position to know.

Q. So you are just testifying to that from hearsay, you don't know?

A. Yes sir, that is what I understood they brought.

1553 Q. But you don't know how much they sold for only from hearsay?

A. No sir.

Q. Now the other securities and properties you realized on while you were there you sent to the bank?

A. Yes sir.

Q. You paid first the expenses of taking care of the horse ranch, and so forth, and taxes and so forth?

A. Yes sir.

Q. And if you didn't have enough money you would draw on the bank for it?

A. Yes sir.

Q. Where was E. W. Mosher during that time?

A. He was in York.

Q. I believe you stated that these lands and things were accumulations of loans made by Ed Mosher for the bank?

A. As I understood it, yes sir.

Q. At any rate you were sent out there by the bank?

A. Yes sir.

1554 Mr. NORVAL: Plaintiffs now offer in evidence the Cross Examination of the witness Dorgan, as found in the Bill of Exceptions of this case, commencing on page 1125.

Cross-examination of Witness DORGAN read in evidence.

By Mr. NORVAL:

Q. Did you make out the deeds when this land was turned over to the bank?

A. No sir.

Q. Did you record them?

A. No sir.

Q. Were they delivered to you?

A. I think some of them passed through my hands.

Q. About how many of them?

A. I couldn't say.

Q. About how many?

A. I don't remember,—a good many.

Q. Do you remember any particular piece of land that the deed was delivered to you, or passed through your hands?

A. No sir.

Q. Now you say this money was given to Ed Mosher to loan for the bank?

A. No, I didn't say that.

Q. What did you say,—what did you testify to in that regard?

A. I said the money was advanced to Ed Mosher for farm loans.

Q. Who advanced it to him?

A. The Capital National Bank.

Q. Who sent him the money?

A. The Capital National Bank.

1555 Q. What individual?

A. I couldn't say.

Q. Did you send it to him?

A. No sir.

Q. Did you see the man who sent it?

A. I believe I have.

Q. Were you there when it was sent?

A. Well, I should say Yes.

Q. Was it sent in currency?

A. I don't know.

Q. Was it sent in gold?

A. I don't know?

Q. Paper money?

A. I don't know.

Q. Was it sent by draft, or Bill of Exchange?

A. Well I think that is the way the most of it was sent.

Q. Some of those ways?

A. No,—the last.

Q. By Bill of exchange?

A. I expect so.

Q. You don't remember do you?

A. Well I wouldn't be positive.

Q. Were you a clerk in the bank at that time?

A. I had charge of the Collections for the bank.

Q. Were you a clerk in the bank?

A. Well I don't know,—I worked for the bank for twelve or fourteen years.

Q. What book did you keep?

A. When I first went to work for the bank, I had charge of the City collections.

Q. I am asking you what book of the bank you worked on?

A. I didn't work on any.

1556 Q. Were you in the teller's cages any time?

A. Yes sir, a good many times.

Q. Did you work in the cage?

A. Yes sir.

Q. And you say that Mosher gave his notes for the money that was sent, that is Mosher gave his notes for the money that was sent in that way?

A. Yes, sir.

Q. Who were those notes sent to?

A. Well sometimes I would bring them in, and sometimes they were sent in.

Q. You would go out there and get it?

A. If I was out there, and he made a deal I would bring in the notes.

Q. What notes do you mean, the notes Mosher gave for the money?

A. Yes, sometimes Ed would send in a note for five or six thousand dollars to his brother, or to the Capital National Bank and tell about a loan that he would want to make.

Q. Would that note come to you?

A. No sir.

Q. You don't know what became of the note?

A. Only in a general way.

Q. Do you know in a specific way?

A. No sir.

Q. Do you know what became of the notes that were sent in, that is if he had loaned the money in York county, and taken notes from the borrower, do you know what became of those notes?

A. Yes sir.

Q. What became of them?

A. They went to the Capital National Bank.

Q. Who took them there?

A. I couldn't say.

1557 Q. Did you take any of them there?

A. I don't know; I wouldn't say Yes or No.

Q. You have no distinct recollection now of having taken any, have you?

A. I wouldn't say Yes nor No to that; I suppose I have taken some.

Q. You may have at sometime, but you have no recollection, is that it?

A. Yes sir.

Q. And do you know what became of the note after it came down to the bank?

A. No sir.

Q. Don't know what was done with it, after that?

A. No sir.

Q. Don't know how it was entered on the books, or whether it was entered or not?

A. I might have known at the time.

Q. What is your recollection now?

A. I have no recollection about it.

Q. And you don't know what was done with the notes of Ed. Mosher so far as the bank is concerned?

A. No.

Q. Do I understand you to say that Mosher borrowed money from the Capital National Bank to loan on real estate for the Capital National Bank, or for Ed. Mosher, what were these mortgages given for?

A. Mosher was loaning money in York county for the Capital National Bank, and in order to get the money he would give a note for five or ten thousand dollars, and as his brother would guarantee the note then Ed could get the money in advance of the loan that was made on a farm. And when the loan was completed, the mortgage and notes went to the Capital National Bank.

1558-1564 Q. And what became of his note?

A. It was taken up, I suppose, of course,—I don't know what became of his note.

Witness excused.

* * * * *

1565 Mr. THOMAS: We offer now to read in evidence the following portions of the testimony of Ellis P. Hamer given at the trial of the case of Kent K. Hayden, Receiver, vs. David E. Thompson, et al., in the Circuit Court of the United States for the District of Nebraska, the testimony taken, I think, during June of 1897.

* * * * *

Mr. ROSE: The defendant Thompson objects to that as incompetent, irrelevant and immaterial, and not binding upon the defendant Thompson.

Mr. BISHOP: The defendant Hamer objects to any and all of the testimony as incompetent, immaterial and not binding upon the administrator, and not related to the issues in this action, nor upon matters connected with this action, and the defendant Yates objects as incompetent and immaterial, and not a matter binding upon or in any way affecting him as a defendant.

1566 The COURT: Let the testimony be read, and the parties have their exceptions.

Mr. THOMAS: Beginning at the top of page 184, ELLIS P. HAMER, being called on behalf of the respondents and duly sworn, as herein-after certified, questioned by Mr. Dewees, testified as follows:

Q. What is your name?

A. Ellis P. Hamer.

Q. How old are you?

A. 73 years old.

Q. Are you the same Ellis P. Hamer who was a director in the Capital National Bank of Lincoln?

A. Yes, sir.

Q. When did you become connected with the Capital National Bank?

A. 1884.

Q. How much stock did you take in the bank?

A. I had 50 shares in the first instance.

Q. Did you subscribe for it?

A. I subscribed for it. Then there was an increase in the capital and I got 25 shares more, and then in '90 I believe I got 15 shares more, paying \$1.25 a share. 90 shares in all.

Q. What did you pay for the previous shares?

A. Well that was from the bank direct. Well \$100 a share.

Q. What kind of business were you engaged in besides this?

A. Well I had various things. I loaned some money, making some farms, building some houses; making some gardens, doing work of various kinds.

Q. Did you practice medicine?

A. No I never practiced medicine for pay since I have been in Lincoln.

1567 Q. Did you continue your connection with the bank until the time of its failure?

A. Yes sir.

Q. And did you attend the meetings of the directory while you were a director?

A. Usually.

Q. What was the process of declaring dividends. What would you and the directors do with reference to that?

A. Well the amount, the gross amount earned by the bank was looked up and given, and various expenses, clerk hire, rent and so forth were deducted from that and then there was sometimes—well I think always, a remnant from the previous declaration of dividends added to that and then the remainder was—there was a dividend declared from the remainder.

Q. Do you remember the bank sustained losses occasionally or any bad debts that came into the bank? If so, what was done with those?

A. Why yes, there was some bad debts,—well as far as I know they were stricken from the account.

Q. Now you may state what you did as a director in reference to this bank and its assets,—its business?

Mr. BISHOP: The defendant Hamer objects to that as incompe-

tent, immaterial, and not related to the issues in this action, and not binding upon the administrator.

Objection overruled.

Defendant Hamer excepts.

A. Well after the decease of Mr. Holmes I was on what was called the finance committee, and Professor Stuart and I looked over the—we examined the notes taken by the bank, the bills receivable, to see what condition they were in, what our judgment was in regard to their soundness and so forth, and we had general supervision over that matter. That is, if we saw anything there that we were hardly satisfied with, we investigated it and we usually found that there was some collateral somewhere that frequently maybe these that we were suspecting were not just what we thought they should be, maybe they seemed perfectly safe.

Q. What bank did you do business with during the time you were a director?

A. I did business with the Capital National Bank.

Q. Up to the time it failed?

A. Yes, up to the time it failed.

Q. When did Mr. Holmes die?

A. May 1891, about that.

Q. Well what did you do when you found there was some inquiry or some criticism or question about some matter in the bank on the part of the Comptroller of the Currency?

Mr. Bishop: The defendant Hamer objects as incompetent, immaterial, not binding upon the administrator, and not related to the issues in this action, nor upon matters connected with this action, and the defendant Yates objects as incompetent, immaterial and not a matter binding upon him in any way, or in any way affecting him as a defendant.

Objections overruled.

Defendants Hamer and Yates excepts.

A. Well I went to the bank and I had considerable—well I had a talk with the officers, chiefly with Mosher the talk was, and I criticised him somewhat for not attending to it more closely, and indicated that there was too much other matters, collateral matters that he was attending to, and he said that he was now clear of the manufacturing,—well I think I spoke of the penitentiary more particularly, the business at the penitentiary, and he said that he was out of that, and indicated to me that there was but little outside of the banking business that he was connected with and said that the banking was his business and that he was wanting to follow that up properly and that these outside affairs he would indicate he was about through with, was the substance of it.

1539 Q. He had already sold out the penitentiary contract to Mr. Dorgan had he not?

A. He said so, yes. That is my understanding.

Q. Well, you may state whether you investigated particularly as to the matters spoken of or referred to by the Comptroller of the Currency?

A. The points spoken of by the Comptroller of the Currency?

Q. Do you remember what they were?

A. Well these loans here were spoken of as being excessive and that they were beyond the limits ordered by the law, or compatible with the law governing national banks.

Q. Did you write to the Comptroller then about it?

A. Why yes, we did.

Q. You may state what you did in reference to ascertaining the condition of the assets of the bank; whether you found out and investigated all that you could of the assets so as to know the real truth of the assets, while you were a director?

A. Why yes, as far as my limited knowledge of that kind of thing would admit, I thought I did. But I had the feeling that I did not comprehend the manner of keeping books to look up closely. I never had any experience with that kind of bookkeeping, nor any other very much. My bookkeeping was a simple affair as far as the doctoring business was concerned.

By Mr. BISHOP: We will offer in evidence Question No. 1048.

Mr. THOMAS: That's objected to on the part of the plaintiffs as hearsay, and a self serving declaration, and not an admission adverse to the interest of the witness.

Objection overruled.

Plaintiffs except.

(Question No. 1048 read by Mr. Bishop, as follows)—

1570 Read by Mr. BISHOP:

Q. Well if you found any paper that you suspected or at least didn't feel satisfied about, what would you do then?

A. Well it was Mosher that usually we went to for an explanation of the paper, and we would inquire in regard to the paper and as I speak of, if there wasn't collateral there and we didn't think it should be, why he made an explanation to me in regard to the paper, and we found often-times some collateral that was not attached to the paper, at least he said there was collateral, and I think he many times produced the collateral.

Cross-examination read by Mr. THOMAS as follows:

Q. I hand you what purports to be a copy of a letter written by you to the Comptroller of the Currency under date of February 23rd, 1892. You may read it over and see whether you wrote such a letter?

A. Well yes, I suppose so, yes sir.

Q. In that letter you say the manner of conducting the Capital National Bank of Lincoln, Nebraska, for a length of time has not been satisfactory to you?

A. Yes, sir.

Q. In what respect hadn't it been satisfactory?

A. Well there was loans. Now the loan of E. W. Mosher—Ed Mosher, I didn't think that was the proper way to do, and I think there was others that had got money in a similar manner. My theory was to keep the matter concentrated here and not send money

out west and let them put it into somebody else's hands to loan. That was what I objected to. That kind of thing. As I say, I had a talk with them and I probably promised more at the close of that because I was in favor of making a very thorough investigation. I always felt rather delicate about looking up the bank books because I knew I didn't know very much about them.

1571 Q. Your idea was it wasn't good banking to send a lot of money out into York county to be invested there at the discretion of some one else?

A. Why yes, I didn't think that was proper.

Q. And in a similar way this money had been loaned to Small had it not, out at Fairfield?

A. Yes I understand that the Small loan was a direct borrow by Small. That is the way I understand that.

Q. Now how was this money loaned through E. W. Mosher at York and to him? Just give your best understanding of it.

A. My understanding of it was that there was money supplied to him by the officers of the bank, and he loaned it to farmers and took their notes.

Q. And the Capital National Bank took whatever loans or notes he sent in to them?

A. That was my understanding.

Q. How long before you wrote this letter had this method of making loans been going on?

A. Well I don't—I didn't know how long.

Q. You don't know how long they had been doing that?

A. No I don't know.

Q. What else was unsatisfactory to you at the time you wrote this letter?

A. Oh I don't know that there was anything particular only I thought they ought to center the business here and do it in a proper and just manner and build up the character and repute for doing business properly and give the bank some character in that direction, as bankers, as a goodly bank. I don't know that there was anything other than that particularly.

Q. Well you were dissatisfied with the way Mosher was engaged in other business,—he had so many irons in the fire?

A. I spoke to him about the other business round about,—outside business.

1572 Q. Now what other paper of the bank were you dissatisfied with, if any?

A. Oh, I don't know that there was any.

Q. Did you know this Western Manufacturing Company paper was in the bank?

A. I knew there was some.

Q. Signed by E. Hurlbut, Jr.?

A. Yes sir, I think so.

Q. Did you know there was any of it in the bank after 1888 when the Western Manufacturing Company number one sold out to Western Manufacturing Company number two?

A. You see I didn't get commingled with that very much until after Mr. Holmes' death. I went in there frequently before his death and looked over the securities, but I didn't look it up very minutely at that time, and it was only,—Mr. Holmes died in 1890 or '91. Well now if you was speaking of Hurlbut notes before that, I wasn't so very observing of them previous to that time.

Q. Did you ever see any of them after that.

A. Well it seems to me so. It seems to me I saw some there. I have some recollection of it, it may have been previously to Mr. Holmes' death. As I say I went in there and looked over the notes and so forth.

Q. Mr. Hamer, did you know that there was such a large number of these Western Manufacturing Company notes in the bank at any time, running up over \$200,000 to \$235,000 at the failure of the bank?

A. At the time of the failure of the bank? No, that is rather in excess of what I was aware of.

Q. Now at the time you wrote this letter and at the time you had this meeting, about how much paper of the Western Manufacturing Company was there in the bank, or rediscounted by the bank, which it had endorsed?

1573 A. I don't know.

Q. What is the amount of the Western Manufacturing Company's paper that was in the bank at any time within your knowledge?

A. Well I didn't have a very distinct recollection of this manufacturing company's paper I didn't have any reckoning on that.

Q. Do you really know whether you ever saw any of it?

A. Well I don't know that I ever said positively that I did. It seems to me that I saw that paper.

Q. Did you ever investigate the company to see who it was or what it was, or did you think it was the one that was managed by Mr. Welch?

A. I knew what it was,—well I reckoned Mosher was at the head of this Hurlbut company that was my reckoning of the matter.

Q. Now in this letter to the Comptroller you say "Your letter is a move in the right direction. It indicates that the directors should take a more positive position in the management, which I for one shall do." Now in what respect had you failed to take a positive position prior to that?

Mr. BISHOP: The defendant Hamer objects as incompetent, immaterial, not binding upon the administrator, and not related to the issues in this case, nor upon matters connected with this action.

The defendant Yates objects as incompetent, irrelevant and immaterial, not a matter binding upon or in any way affecting his as a defendant.

Objections overruled.

Defendants Hamer and Yates excepts.

A. Well there was these movements of circulating the money out

in the country, and his attention was not concentrated, as I thought, upon the bank sufficiently.

1574 Q. When these dividends were declared they were made upon the faith of what Mosher stated to be the condition of the bank were they not?

A. Oh, I couldn't say it was wholly on that, he made the statements but then as I thought, we had some knowledge of the condition of affairs.

Q. Your knowledge of the condition of the bank was obtained from Mosher and Outcalt was it not, largely?

A. Partially.

Q. Wasn't it largely?

A. Well, no, I don't know as I could say it was largely.

Q. Did you make any figures yourself as to the earnings or did you simply take Mosher's statement?

A. Well it was considerably Mosher's statement in regard to that, as I have indicated. I hardly knew enough about the books to make a reckoning so as to verify this statement of his.

Q. Did you count up the expenditures and the losses and inspect the books of the bank for the purpose of verifying this statement of his?

A. Well I have reckoned up expenses some and had reckoned up expenses as far as losses was concerned. I don't know that I got down to the foundation of that. I made some reckoning.

Q. Isn't it true that the bank never until 1892 charged off any losses on the books of the bank?

A. Well I can't say.

Q. You can't specify any bad debts or losses that were charged off can you?

A. No I couldn't I believe.

Q. Did you ever examine at any one time all of the bills receivable and all the paper in the bank?

1575 A. Well I supposed so. We thought we were examining them all.

Q. Did you ever compare the bills receivable in your hands with the books of the bank to see whether you ever had it all?

A. No.

Q. Did you ever look over the paper itself or did you just simply take the book which listed the bills receivable and run over the book?

A. Oh we took the bills receivable themselves.

Q. But you never made any comparison of the books to see whether all that was on the books was given to you for examination?

A. No.

Q. Did you or your committee ever examine the bank, count the cash, add the bills receivable and balance up the books of the bank to see whether they were correct as represented to you at the time you made dividends or at any other time?

A. We never counted the money.

Q. You never counted the money?

A. No. We never balanced up the books. I had seen the books, I suppose the chief books there, but I never balanced up the books.

Q. Did you ever compare the account with the eastern correspondents that your bank had with the balances and account kept by them to see whether your books were correct?

A. No.

Q. Did you ever examine the interest paid account to see the expenditures?

A. That is what was paid to other banks and so forth?

Q. And paid for interest, yes.

A. No, I don't know that I ever looked that up.

Q. Did you ever examine the interest received account showing the amount of interest received?

1576 A. Why yes, I have seen that, and the expenses and the various books but I didn't make any reckoning of that matter.

Q. Did you ever see any of this collateral that you have referred to here. Did you ever see any collateral that was deposited in the bank to secure bills receivable?

A. Why yes, I saw collateral.

Q. Whose collateral did you see?

A. Well at this time I don't know that I could tell but the notes—there was collateral with many of the notes, but I couldn't tell now whose notes they were.

Q. Did you ever see any collateral in there to the notes of C. W. Mosher?

A. I don't know whether I did or not.

Q. You have no memory of having seen any collateral of his, at the present time?

A. I suppose not.

Q. You were on the finance committee were you not?

A. Yes sir, part of the time.

Q. And you and Professor Stuart made a special examination of the paper of the bank?

A. Yes sir.

Q. When was it that you had this meeting for the purpose of considering the condition of the bank and answering the Comptroller's letter?

A. Why it might have been.—let's see. That is the 24th day of February, 1892. Well it must have been thereabouts.

Q. And where was that held?

A. Well I believe it was the Burr block. I don't distinctly mind whether it was the Burr block or the Richards block, but where I was in the building would indicate to me that it must have been the Burr block.

1577 Q. Why was it held away from the bank?

A. I don't know why.

Q. Isn't it a fact, Mr. Hamer, that you thought the bank was in rather a critical condition at that time?

A. No, there was not that feeling. That wasn't the reason. I don't know why. I don't remember any reason why it was there.

Q. How long were you in session that day?

A. Oh, not very long.

Q. And what did you discuss at that meeting?

A. Well we discussed,—that is when I was appointed on this committee. They had made some plans,—there was no finance committee and one of the things done was to say that I should serve on the finance committee.

Q. Did you discuss this E. W. Mosher matter at that meeting?

A. Oh, I don't know. I don't remember the particulars.

Q. Did you discuss the Small loan at that meeting?

A. I don't know.

Q. Did you know of the loss in the Sherman County Bank?

A. I knew there was trouble there with a loan.

Q. Did you know that there had been a loss through Donnell, Lawson & Simpson?

A. Why I knew something of it, yes.

Q. What did you know of it?

A. Well I didn't know anything definite of that, particularly.

Q. Did you know that there was a large amount of paper, some of it out from '87 and '88 down through the history of the bank, the totals of which amounted to \$141,000 that was outstanding in the hands of various agents and banks for collection at the close of the bank, and part of it had been out prior to the payment of said dividends?

1578 A. Did that include the Small loan?

Q. No.

A. No, I was not aware that there was that much.

Q. Did you know that a good many of these notes that were taken through E. W. Mosher and that were obtained through the Marsh Harvester Company, as well as other notes overdue, were outstanding in the hands of E. Hurlbut Jr., and George Sanford and others for collection?

A. I didn't know that E. Hurlbut was trying to collect. Sanford was connected with this Ed Mosher affair to some extent. That is, he was looking up the lands, he was valuing the lands and learning what was against them, to decide whether it was more valuable than the loan and so forth, and all that kind of thing.

Q. Now did you think it was right, Mr. Hamer, while this Small matter was tied up in litigation involving some \$50,000 from 1886 up to the failure of the bank, in view of this loss or tying up of the capital or money of the bank by reason of the failure of Donnell, Lawson & Simpson in the amount of \$29,000 and in view of the losses and tying up of the funds of the bank by the failure of the Sherman county Banking Company, amounting to some 20 odd thousand dollars, and in view of the overdue paper on hand and the amount outstanding in the hands of collecting agents, and in view of the amount of money that was tied up in this E. W. Mosher business, or that was tied up in lands taken by him, did you think the bank was justified in declaring and paying dividends?

A. I don't know as I am banker enough to decide just what

amount a bank might lose and still declare a dividend. I don't know—

Q. Suppose the bank had suffered a loss of \$25,000 during the year and the earnings were \$25,000,—the net earnings except for that loss. Would you think the bank ought to pay a dividend?

A. No, I don't.

Q. Did you know that there were certificates of deposit outstanding in excess of the amounts that appeared upon the books of the bank?

A. No, I didn't know it.

Q. If you had known that fact would you still be in favor of declaring a dividend?

A. I would not be in favor of declaring a dividend if there was nothing to declare them from.—no profits.

Q. Did you know that there were erasures and fictitious entries and false entries in the certificate of deposit register.

A. I have heard it so said.

Q. Did you know it prior to the failure of the bank?

A. No.

Q. Did you examine or inspect those books or the certificates themselves, or the stubs of the certificates on which you have noticed the discrepancies or erasures, prior to the failure of the bank?

A. No.

Q. Suppose that the bank had earned in any one year \$30,000 and one of the officers had stolen out of the bank \$30,000 and concealed the fact, would you, if you had known of that fact, been in favor of paying a dividend just the same?

A. Why no. I wouldn't think it was proper to declare a dividend.

Q. If you had known that there were hundreds of thousands of dollars of outstanding certificates of deposit that were not entered upon the books of the bank, but which would have increased the liabilities of the bank that much more, would you have thought it proper to have declared a dividend, if you had known that fact?

1580 A. No.

Q. I call your attention to two reports made to the Comptroller of the Currency by the Capital National Bank purporting to have been signed by you, dated September 30, 1892 and September 25, 1891, and I will ask you if you signed those?

A. Yes sir.

Q. Did you read those over before you signed them?

A. Yes sir.

Q. Did you ever verify them by the books of the bank?

A. Well no, not entire.

Q. Do you know whether those figures that are on here now were on there then, showing the amount of overdue paper, bad debts, and loans in excess of the limit prescribed by law?

A. I suppose I knew that those were in excess and I suppose I knew it when I signed it, but my understanding of that is that it started with a smaller affair and then run up to these amounts.

1581 Mr. THOMAS: Plaintiffs offer in evidence Exhibit "AU" as found in the case of Hayden Receiver vs. Thompson et al., in the Circuit Court of the United States for the District of Nebraska. The Exhibit being found at page 106 of said transcript. Exhibit "AU" received in evidence as follows:

"Farmers & Merchants Insurance Co.,

Office Comptroller

"Lincoln Electric Light Company,

of Currency,

"Lincoln Gas Company,

Oct. 24, 1892.

"D. E. Thompson, President.

LINCOLN, NEBRASKA, October 21st, 1892.

"Hon. A. P. Hepburn, Comptroller of the Treasury, Washington,
"D. C.

"DEAR SIR: I have yours of October 18th and am surprised that
"as yet you have not received an answer to your letter of August
"31st. This letter of yours was answered after something more
"than two weeks' delay; the delay being caused by the illness of
"Mr. C. E. Yates, one of the directors, making it impossible for
"him to come down town and Mr. Mosher, President of the bank,
"delayed sending the letter to him, expecting, he said, that each
"day he would be able to come out. The letter was signed by my-
"self on presentation and I think was also presented to and signed
"by every director of the Bank, was mailed, so I am told, and should
"have reached you about a month since. Is it not possible that as
"the letter did not come to you promptly as it should have done,
"when it did reach you it was in some way misplaced and is now
"in your office? If not, then it must have been lost in transit which
"would be an unusual occurrence.

"I assure you that I, as a director of the Capital National Bank,
"regret very much that there should have been any delay what-
"ever in the answering of any communication from your depart-
"ment and have only to say now that if our letter is not in your
"possession and you will send a copy of yours of August 31st it
"will receive a prompt reply.

"Yours Respectfully,

"D. E. THOMPSON."

1582 Mr. THOMAS: Plaintiffs now offer in evidence Exhibit
"AT".

Exhibit "AT" received in evidence as follows:

"D. E. Thompson, Lincoln, Neb.

May 29, 1890.

"Mr. Jones, Congressional Committeeman, Seward, Neb.:

"This will be handed you by Mr. C. E. Llewellyn, who has charge
"of rural delivery service for this district. There are to be two lines
"established in your county, and running from your town. Mr.
"Llewellyn is generous enough to say that we may have the choos-
"ing of the carriers for this service. I have asked him to present

"this letter to you and consult you about the matter. It is quite possible that you may get some political help out of the judicious choosing of these carriers.

"Yours truly,

"D. E. THOMPSON."

1583 Mr. THOMAS: Plaintiffs now offer in evidence Exhibit "AZ" as found in the transcript of testimony in case of Kent K. Hayden vs. David E. Thompson, and other-, at page 535 thereof.

Mr. ROSE: Each of the defendants object- to this as not admissible against any of these defendants; incompetent, irrelevant and immaterial.

Objection overruled.

Each of the defendants excepts.

Exhibit "AZ" received in evidence as follows:

"Washington, D. C.

F. J. B.

S. M. C.

Office Comptroller of Currency, Jul- 12, 1889.

L. 2988.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, D. C., July 6, 1889.

Mr. C. W. Mosher, President Capital National Bank, Lincoln, Nebr.

SIR: Your memorandum on office letter of 17th ultimo is received and in reply you are respectfully requested to inform me of the date of acquirement of the real estate taken from J. W. Small of Fairfield, Nebr., for debt.

Respectfully yours,

J. D. ABRAHAMSON,
Deputy Comptroller."

DEAR SIR: Acquired on May 30/1886.

Yours Resp'y,

C. W. MOSHER, *P'l.*

1584 Mr. THOMAS: We offer in evidence Exhibit "3a" which is found attached to Exhibit X-946.

Mr. THOMAS: Is there any question as to the signature of Mr. Mosher on there?

Mr. ROSE: I have no doubt but that it is the signature of Mosher, in fact I think it is.

Mr. BISHOP: I wouldn't know whether it is or not.

Mr. ROSE: Each of the defendants object- as incompetent, not importing any notice to any of the present defendants,—there being no question as to the genuineness of the signature.

The COURT: Let the exhibit be received.

Each of the defendants excepts.

Exhibit "3a" received in evidence as follows:

"In reply to above would answer that we have \$14,000 of paper under that head".

Yours Resp'y,

C. W. MOSHER, *P't.*"

1585 Mr. THOMAS: Plaintiffs now offer in evidence Exhibit "3b" being part of Exhibit X-947.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial; not binding upon the present defendants, and not importing notice or knowledge.

Mr. THOMAS: There's no objection on the ground that it is not the handwriting of Mosher?

Mr. ROSE: It appear- obvious that it is the handwriting of Mosher, in his own hand.

Objection overruled.

Each of the defendants except.

Exhibit "3b" received in evidence as follows:

"DEAR SIR: Above notes have been charged off since last statement.

"Yours Resp'y,

"C. W. MOSHER, *P't.*"

1586 R. E. MOORE, called as a witness on behalf of the defendants, and being first duly sworn, testified as follows,—

Direct examination.

By Mr. BISHOP:

Q. State your name and place of residence.

A. R. E. Moore; I live at Lincoln.

Q. How long have you lived there, Mr. Moore?

A. I came there in the Spring of '71; forty years ago in a little while.

Q. What is your business,—your general business, Mr. Moore?

A. Negotiating farm loans mainly for eastern companies.

Q. Were you acquainted with the Capital National Bank, and Mr. Charles W. Mosher and Mr. Outcalt who ran that bank?

A. Yes, sir.

Q. How long were you acquainted with the bank and with them?

A. Well I knew them before the bank started; I knew of the bank during its existence; probably thirty years.

Q. Did you know Dr. E. P. Hamer, in his lifetime, Mr. Moore?

A. Yes, sir.

Q. How long did you know Dr. Hamer?

A. I don't know that I knew him only what time he lived in this city; I don't know just what time he did come here; I think 25 or 30 years ago.

Q. And up to the time of his death?

A. Yes sir.

Q. Were you a stockholder in the Capital National Bank?

A. I was at one time, a small stockholder.

Q. About when did you acquire your stock?

A. Well I acquired the principal part of it at the time the Capital National Bank was formed.

1587 Q. And did you sell any of your stock to Dr. E. P. Hamer?

A. Yes sir, sold it all to him.

Q. How much did you sell to him.

A. \$1,500 worth.

Q. That would be fifteen shares of the capital stock?

A. Yes sir, I suppose so.

Q. And at what time did you make that sale to Dr. Hamer, Mr. Moore?

A. Well I have no memorandum to show the exact time, but I think from eighteen to twenty months before the bank failed.

Q. Calling your attention to your own certificates and the new one that was issued to Mr. Hamer was about September 3rd, 1891.

A. Well I have no means of fixing the date at all; I suppose it was something like that.

Q. Here is Exhibit "AX" which has been introduced in evidence which is a certificate of fifteen shares of the Capital stock of the Capital National Bank issued to Mr. Hamer, dated September 5th, 1891. Now referring to that exhibit does it recall the transaction or the date?

A. I couldn't say that it does particularly; I know it was something like that time before it failed.

Q. It was about that time?

A. Yes sir.

Q. There are two certificates, Numbers 27 and 82; one for ten shares and the other for five shares, bearing your signature among the papers of the Capital National Bank, introduced in evidence here and the assignment on the back was dated September 3rd, 1891; would that be about the date of your sale to Dr. Hamer?

A. I would suppose so; I would suppose it would be the exact date.

Q. Did you execute the assignment on the back of those certificates?

1588 A. I don't really recall, but I suppose I did.

Q. That would be the ordinary transaction?

A. Yes sir.

Q. Now explain the circumstances, and your conversation with Mr. Hamer and the sale of those shares to him.

A. Well the Doctor came into the office one morning,—into our office, and it was about the time some of the stock had sold for \$1.45 and I told him I heard some of the stock of that bank had sold for \$1.45, and the Doctor said it was worth it, and I asked him if he wanted to buy mine at that price. No, he said he wouldn't give that price, but he would give \$1.25, and I told him he could have mine, so I sold him the stock and he paid me right then and there for it.

Q. He paid you in full, the \$1.25?

A. Yes sir, he paid me—

Q. Paid you in full.

A. Yes sir, paid me \$1,875.

Q. Now Mr. Moore, were you acquainted with the reputation and standing of C. W. Mosher and R. C. Outcalt at the time of the formation of the Capital National Bank and from that time on up to the time of its failure in this community as to their reputation for honesty and probity and capacity for the transaction of the banking business?

A. I think so.

Q. What was their standing and reputation in those respects?

1589 A. Well I think it was quite good.

Q. What was the reputation and standing of the Capital National Bank from the time you became associated with it up to the time of its failure?

A. As far as I know it was regarded a good bank; the directors were good men; strong men.

Q. Mr. Moore, it has been shown in testimony that there was some move taken by Mr. Mosher, the president of the bank, to increase the capital, it is said, to one million dollars. Do you remember anything about that move?

A. I recall some talk about it.

Q. Explain where that talk occurred, and as near as you can, when?

A. Well I should say from my best recollection that I had heard Mosher and Outcalt talk a little about it informally at first, and then I was present at a meeting when it was talked about—a meeting of the stockholders and directors.

Q. Do you remember about when that was?

A. Well it was before I sold my stock.

Q. Do you remember anything about who was present, or took part in that meeting?

A. Some.

Q. Was Mr. D. E. Thompson at that meeting?

A. Yes sir, he was at the meeting I refer to.

Q. What if any expression of opinion, or position did Mr. Thompson take in that meeting?

A. Well Mr. Thompson didn't, in the conversation with me, seem to favor the increase to a million dollars.

Q. Was that at the meeting?

A. That was at the meeting, yes sir.

1590 Q. What was Mr. Thompson's expression on that matter?

A. Well, they had been talking about making the capital from \$300,000 to a million at this meeting and it seems to me it was W. W. Holmes asked me what I thought about it, and I says "Well while we are making a big bank, let's make it a million" and that seemed to stir them some and Mr. Thompson said that I didn't take the stock when I could get it, and now I wanted to put it up to an unprofitable figure, when I had the money to take it and the others didn't, and I said I didn't care anything about the matter and it was dropped.

Q. At that meeting or at any other time when this question was

up was any action taken authorizing the increase of the capital stock from \$300,000 to a million, or any other such sum?

A. Not to my knowledge.

Q. No such action was taken that you were aware of?

A. No sir, not that I was aware of. Or any other sum did you say?

Q. Well to a million dollars in particular.

A. I think it was increased to \$300,000, but I never knew of any action authorizing a million dollar capital, nor more than \$300,000.

1591 Q. Did you know of any record or memorandum to that effect authorizing an increase of the stock to one million dollars?

A. I never knew of any. There might have been but I never knew of it; never heard of it.

Q. Do you remember where the meeting you speak of took place, Mr. Moore?

A. It was in the front room of the banking room of the Capital National Bank in this city, that is my recollection.

Q. That was the "O" street front of the banking room?

A. That is my recollection.

Q. So far as you have attended the meetings of the directors or stockholders of the bank, Mr. Moore, where were they held,—what part of the banking room?

A. Well, I never attended any at any other place than that front end of the bank,—the "O" street end, but I don't think I was ever at more than two of them.

Mr. Bishop: That is all.

Cross-examination.

By Mr. THOMAS:

Q. You say Mr. Moore, you were a stockholder from the time the Capital National Bank was organized until September, 1891?

A. Until I sold my stock to Dr. Hamer.

Q. And that you think was in September, 1891?

A. I think it was, from the date of these certificates.

Q. And this meeting to which you have referred concerning the organization or increasing the capital stock to a million dollars, when was that?

A. Well I couldn't fix the date; it must have been before I sold the stock; I wouldn't think it was such a very great length of time; I never attached much importance to it and I couldn't really fix the date.

1592 Q. And why did you sell your stock?

A. Why did I sell it?

Q. Yes sir.

A. Well I sold it because I thought it was a fair price for it, and I could use the money.

Q. Notwithstanding that Mr. Hamer told you at the time that other stock sold for \$1.45?

A. Yes sir, notwithstanding that. I wasn't a very great enthusiast for bank stock; never was.

Q. You sold this for \$1.25?

A. Yes sir, I did.

Q. And for no other reason than you have given?

A. No other reason that I know of.

Q. Now at the time this million dollar bank was talked of wasn't it suggested that you take \$25,000 of it and you become vice president?

A. Not to my knowledge; it wasn't suggested to me; not at that time.

Q. When was it?

A. That was when they first started the bank; it was suggested to me at that time, when they first started the Capital National Bank.

Q. In 1884?

A. Well they tell me that is the date it was organized; I have no memorandum to recall dates; I know it was a great many years ago.

Q. Do you recall of ever having had a conversation with Mr. Harry T. Jones in November, 1910, in your office in Lincoln?

A. Yes sir,—I think that is the date.

Q. In that conversation did you not say to him that at the time the million dollar bank was talked of they came to you and asked you to become its vice president and take \$15,000—1953—1595 worth of the stock in the new bank with the million dollar capital?

A. No, I didn't say at that time, I said when they started the bank they wanted me to.

Q. No, I mean when they wanted to increase the stock?

A. No sir; I couldn't have made a mistake like that; that was when they started the bank.

* * * * *

1596 Q. Now you say you attended meetings of the directors of the Capital National Bank?

A. Yes sir, I think so.

Q. How many?

A. Well I don't recall of over two, and I am not absolutely certain of but one; I think they were held in this Capital National Bank room.

1597 Q. Were you ever in the back room?

A. I have been in it, yes.

Q. How big was it at that time?

A. Oh, it was quite small; I don't know the exact size.

Q. 12 x 14?

A. I should hardly think as large as that.

Q. 10 x 12?

A. I would think that was nearer the size; it may have been a little larger, I couldn't say.

Q. Who was present at this directors' meeting which you attended?

A. My recollection is that was denominated Stockholders and

directors' meeting, and that is why I was there; I was merely a stockholder and I recall of being present, I think Mosher, Outcalt, Thompson and Holmes, and Professor Stuart; I don't recall any other parties.

Q. When was that meeting held?

A. I don't recall the exact date.

Q. About when?

A. I think it was perhaps '89, '90 or '91, somewhere in there.

Q. Do you recall of anything that took place at that meeting?

A. I recall this conversation with Thompson.

Q. I mean at the directors' meeting.

A. I don't think I stayed at the directors' meeting; I think when the stockholders' meeting was out I left.

Q. Were you ever at a directors' meeting.

A. I think I was at a directors' meeting when they showed some notes.

Q. What were the circumstances of that?

A. All I recall about it is their showing a lot of notes and commenting on them.

1598 Q. Who was present at that meeting?

A. I recollect Mr. Mosher being there, and I think Professor Stuart was there maybe, and Mr. Holmes; it's a great many years ago and I didn't charge my mind with it.

Q. Who else do you remember of being there?

A. I wouldn't be positive of anybody but Mosher.

Q. Was Dr. Hamer there?

A. I couldn't say, but I think he was.

Q. Mr. Yates there?

A. I have no recollection of ever seeing Mr. Yates in a directors' meeting, but I might.

Q. Was Mr. Thompson there?

A. I don't have a positive recollection of but the one meeting that I spoke of.

Q. I thought you said you had no recollection of being at more than one directors' meeting?

A. I don't have a positive recollection of but the one meeting that I spoke of where the increase of the capital stock was discussed.

A. Any other meeting?

A. Well I think I was at another one, but I am not very positive about that, where the notes were discussed.

Q. What else was done besides discussing the notes?

A. I don't recall anything else.

Q. Any dividend declared?

A. I don't know, I don't remember; I think I just dropped in.

Q. Who was discussing the notes?

A. Well the different members of the board, Mr. Mosher would produce the notes and speak of them, and they would comment on it, that it was all right or something of that kind.

Q. Who was the commenting to,—the other members of the board or directory, you mean?

A. No, it was just kind of an informal talk.

1599 & 1600 Q. That meeting was held in the front of the bank?

A. Yes sir; I think that was the only place I ever saw a directors' meeting.

Q. Are you sure you never attended a meeting in the back room?

A. I surely have no recollection of it.

* * * * *

1601 Sister IDA, called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination.

By Mr. ROSE:

Q. Sister Ida, where do you live?

A. I live at Tabitha Home at present.

Q. Is that east of the city of Lincoln?

A. Yes sir.

Q. What sisterhood is it of which you are a member?

A. The Lutheran.

Q. How long have you been connected with the Tabitha Home near Lincoln?

A. It will be two years next May.

Q. Are you acquainted with Walter T. Scott, the old gentleman about seventy years old, and lame?

A. Yes sir.

Q. Where have you known him?

A. As an inmate of the Tabitha Home.

Q. He lived there at the Home sometime—he was there when you came?

A. He was there when I came.

Q. Are you acquainted with his reputation for truth and veracity in and about the Home where he lived there for sometime?

A. Yes sir, I am acquainted with it.

Q. And what is that reputation, good or bad?

A. —.

Q. I will say in any about that community where he lived for a period of ten years, are you acquainted with his reputation for truth and veracity. Answer by Yes or No.

1602 A. Yes.

Q. Now what is his reputation for truth and veracity in that community, good or bad?

A. Bad.

Mr. ROSE: That is all.

Cross-examination.

By Mr. THOMAS:

Q. What is your full name?

A. Sister Ida Koucker.

Q. How long was Mr. Scott out there after you come to the Tabitha Home?

A. He was there ever since I have been there until he was dismissed.

Q. He was there when you came to the institution?

A. Yes, sir.

Q. Wasn't he drawing a salary?

A. No sir.

Q. How do you know?

A. Not to my knowledge.

Q. Are you running that institution?

A. No sir.

Q. Then how do you know what his arrangements were?

A. I keep the record of the books for the Home and our Superintendent keeps the record of the salary.

Q. Isn't it true that Mr. Scott has recovered money for salary from that institution?

A. Not since I am there.

Q. If he has you didn't know about it?

1603 A. If he has I didn't know about it.

Q. Isn't it true that he sued them for his wages out there and got a judgement and collected it?

A. I don't know anything about that?

Q. Who did you ever talk to concerning Mr. Scott's reputation?

A. Well I talked to the sisters out there.

Q. Which one?

A. Sister Christina.

Q. How long has she been there?

A. For two years.

Q. Talked to her when?

A. I don't recall.

Q. About how long ago?

A. I can't say.

Q. Well is it a week or a month or a year or two years? When did you talk to her?

A. Just before I left home I talked to her, but not about Mr. Scott.

Q. When did she tell you anything about Mr. Scott's reputation?

A. When I first came she spoke of Mr. Scott's reputation.

Q. In what regard?

A. That he was bad.

Q. What did she say about him?

A. He had to be watched.

Q. In what way?

A. I don't care to answer that in public.

Q. But I want you to answer that. What did she say about his truthfulness?

A. She didn't speak of his truthfulness.

Q. It had reference to some other matters did it?

A. Yes sir.

1604 Q. And isn't it true that he had some trouble out there on account of marrying a young lady there at the Home?

A. He had some trouble.

Q. He married a young lady out there and the Home was very much opposed to it?

A. No, the Home wasn't opposed to it.

Q. That was the cause of the trouble wasn't it?

A. No sir.

Q. What was the cause of the trouble?

A. Well he was a bad man.

Q. Who else did you talk to besides this sister?

A. I don't speak of such things to other people.

Q. Who else spoke about it?

A. She and I.

Q. She and you—she was the only one you talked to?

A. Yes sir, and I don't speak of those things.

Q. She is the only one you talked to about it, is that true?

A. I said it was.

Q. Where is the Tabitha Home located?

A. East of the city.

Q. How far?

A. I don't know the exact distance.

Q. Approximately.

A. I suppose from here, about two or two miles and a half.

Q. Isn't it four or five miles?

A. I don't think so.

Q. What is your class of work out there?

A. I have charge of the old people and the children.

Q. Does your work confine you pretty closely to the Home?

A. Yes sir.

1605 Q. You don't get to town very often?

A. Very seldom.

Q. You are out there nearly all the time?

A. Nearly all the time.

Q. You don't talk with any one else outside of the Home?

A. Certainly.

Q. I say you don't get much opportunity to talk with people outside of the Home?

A. Well, people come and visit there and I talk sometimes.

Q. But they don't talk about such matters as you have testified to here today?

A. No sir.

Q. And never have talked to you about Mr. Scott?

A. No, I never speak about Mr. Scott.

Q. And no one but this sister ever spoke to you about him?

A. Oh — have spoke about him, but not about his truthfulness.

Q. Not once.

A. Not about his truthfulness.

Witness excused.

1606 Mr. W. H. MENDENHALL, called as witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination.

By Mr. ROSE:

Q. What is your occupation?

A. I am engineer out there.

Q. Out where?

A. Tabitha Home.

Q. How long have you been employed at Tabitha Home?

A. Well sir, it is on two years.

Q. Do you know Walter T. Scott?

A. Yes, sir.

Q. How long have you known him?

A. Close to two years; he was there when I came.

Q. He was at the Home?

A. Yes sir.

Q. Did you see him frequently and talk to him while he remained at the Home?

A. Yes sir, while he was there I seen him pretty near every day.

Q. And are you acquainted with his reputation for truth and veracity in the community there where he has recently lived?

A. Well some, not exactly.

Q. What I mean is, are you acquainted with how he is regarded in that community as being truthful or a liar,—that's what I mean,—his general reputation in that respect for truth and veracity?

The COURT: Answer by Yes or No.

A. Yes sir.

Q. What is his reputation, good or bad?

1607 A. It is bad.

Cross-examination.

By Mr. THOMAS:

Q. When did Mr. Scott leave Tabitha Home?

A. Well it has been over a year I guess.

Q. Since he has been gone?

A. Yes, sir.

Q. How long was he there while you worked there?

A. I should judge about five months.

Q. During that five months that Mr. Scott was out there who did you ever hear say anything about his reputation for truthfulness?

A. Well I never heard anybody come to me and say anything about his truthfulness.

Q. Can you think of anyone that ever said anything to you about his truthfulness during the five months that Walter T. Scott was out there while you were out there?

A. Well no one only the gardener; the gardener there didn't seem to have much stock in what he said.

Q. What did the gardener say to you?

A. Well he was just telling me what Mr. Scott had told him; he said he didn't believe it.

Q. What is the gardener's name?

A. Mark Rathbun?

Q. What did he tell you?

A. Well they were talking about making garden.

Q. I asked what the gardener said about Scott's reputation.

A. He was telling me about Scott telling him he was a
1608 gardener, and Rathbun claimed to be a gardener and of course Scott was trying to get ahead of Rathbun, and Rathbun said he didn't believe he was as good a gardener as he was.

Mr. THOMAS: That's all.

Witness excused.

1609 Mrs. R. A. WHITE, called as a witness and being first duly sworn, testified as follows:

Direct examination.

By Mr. ROSE:

Q. How long have you lived in and about Lincoln, Mrs. White?

A. Since 1890.

Q. When you have lived here in Lincoln what was your occupation?

A. I was teaching in the city schools.

Q. In the public schools of the city?

A. Yes, sir.

Q. Did you have any official relationship, or connection with the Tabitha Home?

A. Yes sir.

Q. What was it?

A. I was a member of the Board of Trustees, and secretary of the Board of Trustees.

Q. Where do you live, just at the present time?

A. York, Nebraska.

Q. Are you acquainted with Walter T. Scott?

A. Yes sir.

Q. How long have you known him, and where have you known him?

A. I have known him for about ten years, and I became acquainted with him in Tabitha Home, when he came out there.

Q. Do you remember the circumstances of his coming there?

A. Yes sir, it was sometime after the failure of the Mosher bank; I don't remember the exact year.

Q. Did he come there as an inmate or as an employe?

A. He came as an inmate.

1610 Q. And are you still acquainted with him?

A. I know him but I haven't seen him for several years.

Q. Didn't you see him in Lincoln recently?

A. I seen him about two years ago.

Q. Now you may state whether you are acquainted with his reputation in and about the community of Tabitha Home and here in Lincoln where he lived for a number of years?

A. Yes sir.

Q. But you say you have seen him within two years?

A. Yes sir.

Q. And you have been here frequently in the two years?

A. Yes sir.

Q. Now you may state what that reputation is for truth and veracity, good or bad?

A. It is bad.

Cross-examination.

By Mr. THOMAS:

Q. You say you have lived in York for five years?

A. Yes sir.

Q. How often have you been in Lincoln in that time?

A. I can't state the exact times, but I have been here a number of times.

Q. About how many times?

A. The first years I belonged to the Home I was here on an average of half a dozen times a year, the first years; lately I 1611 haven't been here so often, about twice a year.

Q. The last few years you have only been here twice a year?

A. Yes sir.

Q. And you saw him when last?

A. I saw him at the Long-Moyer case.

Q. What case was that?

A. That was sometime ago.

Q. How long ago?

A. I don't know the exact time; it must have been about two years ago.

Q. Can you tell me what the case was, so I can locate it,—what was the case about?

A. About a girl suing the Home for some wages.

Q. In what court?

A. Here in Lincoln,—Judge Cornish's court first.

Q. And did Mr. Scott sue for his wages to—?

A. No sir.

Q. Didn't he afterwards, or before, sue for his wages?

A. I know nothing about Scott suing the Home for wages.

Q. Now this suit you have in mind was how many years ago?

A. About two years ago; maybe a little longer; I don't know the exact number of years.

Q. And that was the last time you saw Scott?

A. No, the last time I spoke to him,—the last time I saw him was a little bit later, when I was at the Home, but I just saw him.

Q. Now in the last year who has talked to you about Mr. Scott or said anything to you about his reputation for truthfulness?

1612 A. I don't know the last year that anybody talked to me.
Q. In the last two years who has ever said anything to you about his reputation for truthfulness?

A. Mrs. Hiner and I talked about that within two years.

Q. Mrs. Hiner out at the Home?

A. Some time ago, yes sir.

Q. How long has that been?

A. That was when the English Lutheran Evangelical church took charge of it.

Q. Was that the time you had the talk with her?

A. Yes sir.

Q. How long ago has that been?

A. You can look up the records; I can't tell you exactly.

Q. What is your best recollection?

A. I don't know.

Q. When you have been in Lincoln in the last five years what has been your business here?

A. Why to meet with the Board of Trustees first, and consult about the affairs of the Home, and then later,—these last two years I have been here for my own business, not for business of the Home.

Q. Then for the first three years after you went away when you came here it was solely on business pertaining to the Tabitha Home?

A. Yes sir.

Q. And you would just go to the Home and back?

A. I might call on some friends.

Q. And the last two years you have been on some other business?

A. Yes sir.

Q. Now can you tell me one instance where any person ever told you that Mr. Scott's reputation for truthfulness was bad?

A. Yes.

1613 Q. When was it?

A. At the Long-Mayer trial, he told absolute falseness.

Q. I am asking you to tell me who ever told you that his reputation for truthfulness was bad?

A. Well at that time, if I could look up the time of the trial, Mrs. Hiner and Mr. Hiner told me about him lying.

Q. That was in regard to a suit that was had over some wages that some woman claimed the Tabitha Home owed. Isn't that true?

A. Yes sir.

Q. And those parties, Hiner, they were representing the Tabitha Home in that lawsuit?

A. Yes, sir.

Q. And this woman had sued the Tabitha Home?

A. Yes sir.

Q. And Mr. Scott was a witness in that case?

A. Yes sir.

Q. And Mr. Hiner and his wife were opposed to him?

A. Yes sir.

Q. And the woman was successful and recovered her wages in that suit?

A. Yes sir.

Q. But you don't remember that Mr. Scott had a similar suit against them?

A. I don't know.

Q. You don't say he didn't?

A. I know nothing about it.

Q. And the jury in that case found in favor of the party claiming the wages?

A. I couldn't help that; I know what he said that was false.

1614 Q. You testified in that case?

A. Yes sir.

Q. And Mr. Hiner and Mrs. Hiner testified?

A. Yes sir.

Q. And you all testified just contrary to what Mr. Scott did?

A. Yes sir.

Q. And the testimony that you and Mr. Hiner and Mrs. Hiner gave wasn't what Mr. Scott testified to?

A. It was what they asked us.

Q. You didn't agree in your story?

A. Not when he told lies.

Q. Well, the jury found against you didn't they?

A. I couldn't help that; he told lies.

Q. The jury found that you people told the lies and he told the truth didn't they?

A. I couldn't help that.

Q. The jury found against your testimony.

A. No, it found against him at first and then he appealed it and finally they made a settlement so I don't know whether the jury found against us.

Q. The jury found that there were some wages due?

Q. You don't like Mr. Scott do you?

A. No sir. I will answer why—

Q. I don't care for that.

1615 A. I have no personal dislike, no.

Q. He married a woman that was living out at the Tabitha Home, didn't he?

A. I heard so by the papers that he did.

Q. You didn't know anything about it?

A. Not lately. I know that he was an immoral person when I was there; that he lied and allowed himself familiarities for which he was reprov'd, and which made him very angry; for that reason he became angry at that Home. I know that positive, and a man that is as immoral as Scott, how could anyone like him; I have no personal dislike.

Q. Then your testimony is based upon the fact of his immorality?

A. And untruthfulness; his lying.

Q. You are basing that upon your own opinion of Scott?

A. My own individual talking, and what I saw of him; it is based upon my acquaintance with him, and what I have seen when I was at the Home and from personal observation; hearing and seeing.

Witness excused.

1616 Mr. W. A. SELICK, called as a witness on behalf of the
towit: defendants and being first duly sworn testified as follows,

Direct examination.

By Mr. ROSE:

Q. You are a citizen of Lincoln?

A. I am.

Q. At present representative of this district in the state Senate?

A. Yes sir.

Q. Formerly practiced law here in Lincoln?

A. I did.

Q. And what is your present business?

A. I am manager of a wholesale mercantile establishment.

Q. How long have you lived in Lincoln?

A. Twenty six years next March.

Q. Are you acquainted with W. T. Scott, a lame man, formerly employed as bookkeeper in the Capital National Bank?

A. Yes sir.

Q. How long have you known him?

A. Practically all that time; my acquaintance with him began soon after I moved to Lincoln.

Q. And acquainted with him still?

A. Yes sir.

Q. In recent years have you been connected with any investigations in which Mr. Scott was interested or concerned in any way?

A. Why I hardly know to what you refer.

Q. With which he had any connection as a witness or otherwise?

A. Only in this way. I was a member of an investigating committee appointed by a charitable society here to investigate Tabitha Home, if that is what you refer to. In that investigation, if

1617 I remember rightly, Scott was a witness for the Home, and that is the only instance I recall that would be responsive to your question at all.

Q. What was the style of your firm in 1887?

A. Sellick & Lane.

Q. Where was your office at that time?

A. On the south side of "O," between Eleventh and Twelfth; my recollection is it was 1127, but I would not be quite sure of that number. It was about midway between Eleventh and Twelfth on the south side of "O" street.

Q. Did you have any business at or about that time with this Mr. Scott?

A. Yes sir, he was a client of mine.

Q. Was he ever at your office at a time when R. C. Outcalt was there?

A. Yes sir, once.

Q. I want to ask you if in or about the year 1887, this Mr. Scott came to your office with what purported to be some forged promissory notes, purporting to have been carried by C. W. Mosher as assets

of the Capital National Bank, for your inspection, and if while he had such alleged forged notes in his possession R. C. Outcalt came into your office: spoke to Mr. Scott reproachfully and took the papers referred to, and with Mr. Scott left your office?

Mr. BURR: I would like to ask the witness a question, if the Court please, to see if he was not attorney at that time——

The COURT: You may do so.

By Mr. BURR:

Q. You spoke of him being a client of yours at that time?

A. Yes sir.

Q. Was he then visiting you as a client?

A. He used to come there to consult me as attorney.

1618 Q. And the relation of client and attorney existed between you upon the subject then being discussed by you and he?

A. Yes sir.

Mr. BURR: Then Your Honor, we object to the testimony because it is a privileged communication, not only of the witness, but of Mr. Scott and all the parties here, and cannot be inquired into, because of the relation of attorney and client, and because the communication whatever it may be was confidential.

Mr. THOMAS: And for the reason it is an effort to impeach on an immaterial matter, and at a different time and place than was mentioned in the testimony in this case; no foundation laid as against Mr. Scott.

Mr. ROSE: May I ask another question before Your Honor passes on the objection?

The COURT: Yes sir.

By Mr. ROSE:

Q. In the matter in which you were professionally advising with Mr. Scott who were Mr. Scott's adversaries, if anyone?

A. It is difficult to answer that by names for the reason that there were no cases involved, that is, I mean no suit. I would say that Mr. Outcalt was the man who was considered as the party in interest opposed to Mr. Scott at the time, but in the sense of being adverse, as we understand in a lawsuit, there was no lawsuit at that time.

Q. Was it in respect to the affairs of the Capital National Bank, was that the subject of it?

1619 A. Yes sir.

Q. Now then I renew the former question to which objection was made.

(Question repeated.)

Mr. BURR: Well Senator, was this man there as a client and were you advising with him?

A. Yes sir.

Q. And the relation of attorney and client existed at that time?

A. Yes sir.

Q. And the evidence which you would now give would be relating to the matter about which you were interrogated as his counsel?

A. Yes sir.

Q. Do you desire to disclose this communication?

A. I wouldn't feel that I had a right to without his consent. My position in the matter I want to state frankly is, I have no desire to withhold any information in my possession that would be helpful to either of these parties, but I would prefer not to trespass upon the grounds of professional courtesy without the consent of Mr. Scott in this matter.

Q. I will say in respect to my question that I did not wish the witness to disclose any confidential communication, but I asked him whether at the time when Mr. Outcalt, as the cashier of the Capital National Bank and the adversary of Mr. Scott, was present with him in the office of the witness, the incident which I have related of Mr. Outcalt's picking up alleged forged notes took place in the presence of Mr. Outcalt and Mr. Scott.

1620 Mr. THOMAS: That is objected to as a privileged communication, and an attempt to impeach a witness on an immaterial matter; no proper foundation laid, and the impeaching question not having been called to the attention of the witness Scott.

The COURT: The Court is of opinion that the impeachment is wholly upon an immaterial matter and not within the issues of the case, and that under the statement of Senator Sellick any communication which he would now give would be privileged, and for that reason the court sustains the objection.

Each of the defendants excepts.

Mr. ROSE: We offer to prove by the witness Sellick that in the year 1887, Walter T. Scott, who has testified in this case as a witness on behalf of the plaintiffs, came to the office of the witness, on "O" street between Eleventh and Twelfth, in connection with a controversy between himself and the Capital National Bank, and brought with him for the inspection of the witness some documents purporting to be forged promissory notes executed by Charles W. Mosher, and carried for a period as assets of the Capital National Bank, and that while Scott was so in witness' office R. C. Outcalt the cashier of the Capital National Bank entered the office; reproached said

1621 Scott, picked up the notes that said Scott had brought in and departed with the notes and said Scott from the office,—excluding in the offer of proof any communication of a privileged character, or any communication or transaction other than such as took place in the presence of both R. C. Outcalt and said Scott.

Mr. THOMAS: I am willing to admit that Mr. Scott was in the office of this witness, with some notes which purported to have been forged by Mr. Mosher and that Mr. Outcalt did step into that office, and as Mr. Rose said reproached Mr. Scott, and grabbed the notes and went out. Now we will admit that but we still insist it is immaterial and an attempt to impeach on immaterial matters and a privileged communication.

By Mr. THOMAS:

Q. Wasn't this occurrence several years before Mr. Scott quit the employ of the bank?

A. My memory is not quite clear as to the exact time; I can fix it though as being in the latter part of '86 or early part of '87. I am unable to fix in my mind the exact date, but I remember where the incident was, and I remember that my office was at that place during those years.

Q. Do you know, Mr. Sellick, that Mr. Scott continued in the employ of the bank after that for some time?

A. My impression is that he did.

By Mr. ROSE:

Q. Now I want to ask you, following their inquiry, what is your knowledge as to whether he concluded an adjustment by 1622 which he gave to the bank a note for \$7,644.00 or thereabout, to cover the balance of fraudulent credits entered by Scott to his own account on the certificate of deposit register of the Capital National Bank?

Q. Now Mr. Smith you have expressed a hesitancy about this other matter. I would like to ask you whether you are acquainted with Walter T. Scott's reputation for truth and veracity in this community where he has lived?

A. When, now or then?

Q. Now or then,—or a time reasonably near to the present issues.

A. Why I think perhaps as much so as most anybody would be.

Q. Well what is it, good or bad?

A. I can't say that he would have any general reputation. I have heard his truth and veracity questioned seriously on a certain occasion, but I wouldn't want to testify that he had a reputation one way or the other.

Q. You wouldn't want to testify that he was prominent enough to have a general reputation.

A. No.

Q. I guess you never did swear away anybody's reputation for truth and veracity.

A. I wouldn't want to.

By Mr. THOMAS:

Q. You never heard anybody question Mr. Scott's reputation for truth and veracity?

A. Only in one instance.

1623 Q. Was it in some litigated case?

A. No, it was in this case that Mr. Rose inquired about.

Q. The Tabitha Home matter?

A. Yes, sir.

Q. I mean so far as his general reputation,—you never have heard it discussed anywhere before?

A. Except in that one investigation.

Q. That's the only time you ever heard about it?

A. Yes sir, that's the only time, one way or the other.

Q. And was he your client for a number of years while you were in the practice?

A. Yes sir.

Q. And you had litigation for him?

A. Yes sir.

Q. After the Capital National Bank failed?

A. Yes sir.

Q. You appeared for his wife in some divorce proceedings?

A. I was her attorney in the matter of her divorce.

Mr. THOMAS: That is all.

Witness excused.

1624 Dr. H. B. MILLER called as a witness on behalf of the defendants, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. ROSE:

Q. Where do you live?

A. Lincoln, Nebraska.

Q. What is your business?

A. Physician.

Q. Do you hold a certificate from the State Board of Health of Nebraska to practice medicine and surgery?

A. I do, yes sir.

Q. Do you have any official connection with the Tabitha Home?

A. Physician to it.

Q. Are you acquainted with Walter T. Scott, a lame man, that was formerly an inmate of that institution?

A. Yes sir.

Q. How long have you known Walter T. Scott?

A. I am not positive as to his middle initial, but I know a man they called Walter Scott.

Q. Well a lame man that was out there.

A. For the last five years.

Q. Where did you live during that time?

A. Lincoln, Nebraska.

Q. Where did Mr. Scott live?

A. Part of the time at the Home, and part of the time in the city.

Q. Are you acquainted with his general reputation in the community where he has lived for the last five years for truth and veracity?

A. Yes sir.

1625 Q. What is that reputation, good or bad?

A. Bad.

Q. Have you noticed and observed Mr. Scott and his demeanor?

A. While he was at the institution, yes sir.

Q. Enough to form an opinion as to whether he is sane or insane?

A. I would class the man as a moral degenerate.

Q. I want to ask you if moral degeneracy, if you use the term in the sense of a classification of insanity?

A. Yes sir.

Q. What is your opinion as to whether he is at this time sane or insane?

A. If you will allow me to class that under insanity.

The COURT: You are the man that is doing the classification.

A. Then I should say that the man is suffering from a species of insanity.

1626 Cross-examination.

By Mr. BURR:

Q. Did you ever examine this Mr. Scott?

A. In what way?

Q. As a physician and surgeon?

A. I have examined him as a physician of the Home.

Q. What kind of an examination did you give him?

A. He would refuse to get up in the morning, and lie there and want them to bring his breakfast to him, and I have gone into his room to see whether he was sick, or simply acting as an abnormal person would.

Q. You know, Doctor, that I asked you what kind of an examination you gave him?

A. You know that I answered your question, don't you?

Q. I know you did not. Now answer my question. All the examination you gave him you have stated?

A. Yes sir, all that is necessary for a physician to state, when he says he makes an examination. I went in and made an examination sufficient to convince myself that the man was shamming; that he wasn't sick.

Q. Do you know that we have an insanity commission established in this county?

Q. Well did you ever prefer any charges against him for insanity, so that he might be sent to the asylum, where he would receive proper treatment?

A. Not before any insanity board, no sir.

Q. We have a large insane asylum here, don't we?

Mr. ROSE: Defendants objects as immaterial, and not proper cross examination.

Objection sustained.

1627 Q. You are surgeon of the Lincoln Traction Company, are you not?

A. Yes sir, one of them.

Q. And all persons injured by the Lincoln Traction Company are taken to the Tabitha Home?

A. No sir.

Q. Well all that can be taken there are?

A. No sir.

Q. Don't you remember the lady that was hurt right out here within one block of her home, that you took way out to this home?

Q. How much stock have you got in the Tabitha Home?

A. None at all, sir.

Q. Not interested in it in a financial way, at all?

A. Only that I would like to get about five or six hundred dollars that they owe me; that's the only way.

Q. Well is the traction company going to pay it to you?

Q. Well now, Doctor, I will ask you just once more,—you pass your opinion here as a physician of his being insane. Do you base your opinion on what you have already told the court and that alone?

A. No sir.

1628 Q. Well you told it all, didn't you?

A. I told you that I had observed the man for the last five years, and had been acquainted with him.

Q. Can you tell the Court now what species of insanity he has?

A. Why he is a moral degenerate.

Q. That you call insanity?

A. I call it a species of insanity, yes sir. A normal man wouldn't be that way, an insane person is nothing but an abnormal individual, mentally.

Q. Are you still acting as the physician and surgeon for the Tabitha Home?

A. When they call me, yes sir.

Q. How long have you lived in Lincoln?

A. About six years.

Q. Where did you come from here?

A. Came from Alliance here, the last time.

Q. Did you practice the medical profession up there?

A. About seven or eight months; I was staying there in the winter.

Q. Where were you before you went to Alliance?

A. Came from Cumberland, Maryland.

Q. How long were you at Cumberland, Maryland?

A. Twelve years.

Q. Where did you take out your—get your first diploma?

A. Philadelphia.

Q. Did you ever examine this man, or have him examined—with any other physician?

A. No sir, not that I recollect.

Q. Who have you heard talk about his reputation, his general reputation for truth and veracity?

A. Well the people in charge of the institution and the inmates of it, mostly.

1629 Q. Were you a witness in the two lawsuits they had, suing the Home for services?

A. No sir.

Q. Were you there at that time?

A. No sir.

Q. You knew that Scott and some lady sued them for their services out there, didn't you?

A. I did not; never knew that they were sued.

Q. Didn't you know, Doctor, that that it what caused the trouble out there, because Scott and this woman sued them for services?

A. That had nothing to do with the trouble as far as I know; I advised the people in charge of the institution to get rid of him as quickly as possible; that's all I know about it; I supposed that was the reason he left.

Q. You say you didn't even have any knowledge of the *sout* out there?

A. No sir.

Q. Did you have knowledge of the suit that Hiner the principal brought?

A. No sir.

Q. Have you stated then all the persons you knew that you had heard talk about his reputation for truth and veracity?

A. Oh, it would probably take me a couple of hours to think of all that — have told me.

Q. Suppose you think hard for a couple of minutes and then tell us who it was, name the individuals that you have heard talk about his general reputation for truth and veracity in that neighborhood, or in this neighborhood.

A. You want the names of all of them that I can remember. The superintendent, —

Q. You mean Mr. Hiner?

A. No sir.

Q. Who is the superintendent?

— Rev. Colon, Sister Ida, — that is the matron in charge of the old folks; the former matron and her husband, Mr. and Mrs. Fredericks; the one before that, Mrs. White. I don't remember whether she was matron, or secretary of the institution, and various men that they have had working there at different times.

Q. No, no, give the names.

A. I don't remember the help that they had out there Mr. Burr, there has been so many changes there in the last five years. There has been about thirty inmates out there in the last five years and they come and go.

Q. And is that all you remember now?

A. That's all I think of.

Q. Do you know the name of the matron in charge of the old folks?

A. I gave that, Sister Ida.

Q. Then Mrs. White and Mrs. Fredericks?

A. There were two different German ladies there at different times.

Q. Now Doctor, give the Court the name of some individual not connected with the Tabitha Home that you have heard talk of this?

A. That thinks he wouldn't tell the truth you mean?

A. Yes sir.

A. Who says his reputation is bad. Mr. Malone, Mr. Rhody, 1631 Police Matron, Mrs. Doyle, the various police officers; I don't know their names,—I have spoken to several of them and in a casual way quite a number of people that I probably wouldn't remember their names, but I have never had anybody tell me that I have asked the particular question that knew him, that would say he was truthful.

Q. You have asked all those people have you?

A. Some of them I asked and some of them voluntarily told me.

Q. Do you know how it came up?

A. Yes, sir.

Q. You asked the Police Matron you say?

A. Yes sir.

Q. And these several police officers, you don't remember their names?

A. No sir.

Witness excused.

1632 Mr. WILLIAM C. RHODE called as a witness on behalf of the defendants, and being first duly sworn, testified as follows, to wit:

Direct examination.

By Mr. ROSE:

Q. What is your business and where do you live?

A. Health officer here; I live in the city of Lincoln.

Q. How long have you been health officer?

A. Been in the Health department something like 22 years.

Q. Are you acquainted with a lame gentleman named Walter T. Scott, who used to be a bookkeeper in the Capital National Bank?

A. Yes sir.

Q. And in recent years has lived at Tabitha Home, east of Lincoln?

A. Yes sir.

Q. How long have you known him?

A. Twenty five years or more, perhaps.

Q. Are you acquainted with his general reputation in the community where he has lived for truth and veracity?

A. Yes sir.

Q. What is Mr. Scott's reputation for truth and veracity, *go* good or bad?

A. It isn't very good.

Q. Well is it good or bad?

A. It is bad.

Cross-examination.

By Mr. THOMAS:

Q. Who requested you to come up here and testify?

A. Why Mr. Yates.

1633 Q. Who else?

A. And Mr. Mullen.

Q. Who else?

A. That was all.

Q. When did they speak to you?

A. Several days ago.

Q. Since they have spoken to you you have been going around and talking to a few people to find out about Mr. Scott's reputation, have you?

A. No, I didn't have to do that.

Q. You haven't talked to anybody in the last two or three days?

A. Oh, I have heard talk about it.

Q. Have you talked with anybody in the last two or three days, yourself?

A. I talked to the Doctor about it.

Q. The doctor who was on the stand?

A. Yes sir.

Q. And talked to Malone, did you?

A. Yes sir, I talked to Malone.

Q. When did you talk to them?

A. Oh, within the last few days.

Q. And Mr. Mullen and Mr. Yates asked you to go and see them, did they?

A. No sir, they didn't.

Q. Did anybody ask you to go and see them?

A. No sir.

Q. Nobody suggested it to you?

A. No sir.

Q. You just went to them and asked them about Scott's reputation?

A. I heard them talking about it, and I butted in.

1634 Q. And you talked with them about it?

A. Yes sir, we talked about it,—yes sir.

Q. In the last two or three days.

A. Yes sir.

Mr. THOMAS: That is all.

Witness excused.

1635 Mr. FRED FOSTER called as a witness on behalf of the defendants, and being first duly sworn, testified as follows, to wit:

Direct examination.

By Mr. ROSE:

Q. Where do you live, Mr. Foster?

A. Lincoln, Nebraska.

Q. What is your business?

A. Lawyer.

Q. What if any official position did you hold last year?

A. Deputy county attorney of Lancaster county.

Q. How long have you lived in Lincoln?

A. About thirty years off and on; 23 years out of that 30 I guess.

Q. Do you know Walter T. Scott?

A. Yes sir.

Q. How long have you known him?

A. I have known him by sight for several years; personally just a few months.

Q. And in the last few months have you had any business that brought you in contact with him?

A. Yes, sir.

Q. Was that after you had occasion to make any special investigation as to him?

A. Yes, sir.

Q. Now are you acquainted with his present reputation in this community where he lives for truth and veracity?

A. Yes, sir.

Q. What is that reputation, good or bad?

A. Bad.

1636 Cross-examination.

By Mr. THOMAS:

Q. Did I understand you to say you are a lawyer?

A. Yes sir.

Q. Are you related to Elmer Stephenson?

A. Yes sir.

Q. In what way?

A. Nephew by marriage.

Q. Pretty warm friends?

A. Why, yes sir.

Q. A friend of Mr. Mullen's?

A. Yes sir.

Q. They asked you to testify here, didn't they?

A. They did not.

Q. Who did?

A. Mr. Mullen did.

Q. Were you interested in the prosecution with reference to bringing about an annulment of the marriage of Mr. Scott to some woman of Tabitha Home, that he married?

A. Yes sir.

Q. That's the litigation to which you refer?

A. Yes, sir.

Q. And that's the first time you knew him when you had occasion to go into this litigation?

A. Yes, sir.

Mr. ROSE: You looked up representations he made as to his age at that time, and certain other matters to-, didn't they?

A. Yes sir.

Witness excused.

1637 Mr. CLAUDE WILSON called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination.

By Mr. ROSE:

Q. Where do you live and what is your business?

A. Lincoln, Nebraska; attorney at law.

Q. How long have you lived in Lincoln?

A. It will be thirty years this coming Thanksgiving.

Q. Did you know Walter T. Scott, a lame man that used to be bookkeeper at the Capital National Bank, and more recently for a term of ten years was out at Tabitha Home?

A. I didn't know anything about his connection with the Capital National Bank, but I know a Walter Scott that was formerly in Tabitha Home.

Q. A lame man, an old man about seventy years old?

A. Yes sir, gray hair.

Q. How long have you known him?

A. Well I couldn't say exactly; it hasn't been very long; it has been inside of six months.

Q. In that period of time have you come to know him personally?

A. Yes sir.

Q. Know something about his life?

A. Yes sir.

Q. And conduct?

A. Yes, sir.

Q. Have you known anything about his marriage?

A. Yes sir.

Q. And about a suit for annulment of his marriage?

A. Yes sir.

Q. Talk to persons about it?

A. Yes sir.

1638 Q. Well now about when did you get acquainted with him?

A. It was the day after his marriage; I couldn't tell what date that was; that has been from three to six months ago, and I couldn't fix it much different than that.

Q. And did you know him since that?

A. Yes sir.

Q. And know him now?

A. I certainly know him now, but I haven't seen him for some time.

Q. Are you acquainted with his general reputation in this community for truth and veracity?

A. I think so; I am, yes sir.

Q. And what is that reputation?

A. I would say it was bad.

Cross-examination.

By Mr. THOMAS:

Q. You say, Mr. Wilson, you didn't know of him except through this incident that grew out of the Tabatha Home marriage?

A. That has been the source of my knowledge, yes sir.

Q. That has been the whole source of your knowledge?

A. Yes sir.

Q. Never heard of him before?

A. Never heard of him before.

Q. Outside of that incident you hadn't heard of him?

A. No.

Q. Now, Mr. Wilson, you say you are an attorney here in town?

A. Yes, sir.

1639 Q. And you are acquainted with the leading attorneys?

A. I think I am.

Q. I will ask you if it is not true that you have heard of leading attorneys, that stand at the head of the bar, you have heard people question their integrity and truthfulness?

Q. I will ask you if you haven't heard people claim that even Brother Rose's reputation wasn't good?

A. I couldn't say about that.

Q. Have you not heard people talk about him and other lawyers?

The Court: In what particular way did Scott's reputation for telling the truth come in question in your litigation there?

A. Well now in order to go into that I would have to go into some professional communications with Scott, but from what Scott told me and from what I afterwards found out, I found out that he wasn't even telling me the truth.

Q. You were his attorney?

A. Yes sir, I was his attorney.

Q. Then you base your statement on what he told you?

A. No, I started from that, but since that time I have found out a good many more things.

Q. The basis of your testimony here is what you know about him personally?

A. Yes sir, personally, and from what other people have told me since that time.

By Mr. THOMAS: Plaintiffs move to strike out the testimony of the witness because it appears that the statements were made to him as confidential communications, as between attorney and client.

1640 Mr. THOMAS:

Q. He came to you as a client?

A. Yes, sir.

Q. And you tell the court now that he mis-stated things?

A. Yes sir.

Q. You think that is a professional way to treat a client?

A. I wouldn't tell you what he told me, but I tell you that I found out things that he told me were not true. I think when a client comes to me and tells me things and I find out that those things are absolutely false, I am not betraying any professional confidence when I do that.

Q. Did that ever happen to you before?

A. Yes sir.

Q. And isn't it frequently the case that a client tells you things that you find out afterwards are not true?

A. Not frequently.

Q. Do you try very many lawsuits?

A. I try all I can get.

Q. Do you try very many?

A. Yes sir.

Q. Don't you know that it frequently happens to you that your own clients tell you things that you find out are not true?

A. Often times clients tell *me* something that the other side disproves but that is many times not a question of veracity, but when a client tells you something that you find out to be absolutely false afterwards, then there is no guesswork about it.

Witness excused.

1641 Mr. THOMAS: Plaintiffs offer in evidence Exhibit "a-4" being a notice appearing in the Lincoln Daily Call of the issue of Friday Evening, October 7th, 1892, purporting to be a report of the condition of the Capital National Bank of Lincoln, Nebraska, at the close of business September 30th, 1892.

Mr. BISHOP: Each of the defendants objects as incompetent, irrelevant and immaterial; not relating to any of the issues in this case; not referred to nor made a cause of action in the petitions. Thompson and Yates specifically and separately object for the reason that the report does not purport to have been attested by them or either of them, but do not object on account of the identity of the paper, The Evening Call, nor the fact that it was a paper in general circulation at the time it purports to have been published, to wit, October 7th, 1892.

Objection overruled.

Each of the defendants excepts.

The Exhibit offered is received in evidence.

(Copy follows):

1642

EXHIBIT A-4.

Lincoln Daily Call, Friday Evening, Oct. 7, 1892.

Report of Condition of the Capital National Bank at Lincoln, Nebraska, in the State of Nebraska, at the Close of Business September 30th, 1892.

Resources.

Loans & Discounts.....	757,762.79
Overdrafts, secured and unsecured.....	3,971.48
U. S. Bonds to secure circulation.....	50,000.
Stocks, Securities, etc.....	7,551.45
Due from Approved Reserve Agents.....	84,163.35
Due from other National Banks.....	7,442.92
Due from State Banks and Bankers.....	2,355.47
Banking house, furniture and fixtures.....	5,770.
Other real estate and mortgages owned.....	38,617.93
Current expenses and taxes paid.....	8,079.84
Checks and other cash items.....	3,359.23
Exchanges for Clearing house.....	19,544.74
Bills of other banks.....	1,265.
Fractional paper currency, nickels and cents.....	341.90
Specie	27,038.
Legal tender notes.....	15,047.
Redemption Fund with U. S. Treasurer, 5% of circulation	1,250.
Total	1,033,561.11

Liabilities.

Capital Stock paid in.....	380,000.
Surplus fund	6,000.
Undivided Profits	11,978.
National Bank Notes outstanding.....	45,000.
Individual deposits subject to check....	271,958.80
Demand certificates of deposit.....	138,932.44
Cashier's checks outstanding.....	1,119.00
Due to other National Banks.....	96,113.01
Due to state banks and bankers.....	132,269.41
	<hr/>
	640,612.75
Notes and bills rediscounted.....	26,967.67
	<hr/>
	1,033,561.11

STATE OF NEBRASKA,
Lancaster County, ss:

I, C. W. Mosher, Cashier of the above named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

C. W. MOSHER, *Cashier.*

Subscribed and sworn to before me this 6th day of October, 1892.

[SEAL.]

HAL C. YOUNG,
Notary Public.

Correct. Attest:

E. P. HAMER,
A. P. S. STUART,
R. O. PHILLIPS,
Directors.

1643 Mr. H. W. HERBARD called as a witness on behalf of Plaintiffs, and being first duly sworn testified as follows, to wit:

Direct examination.

By Mr. NORVAL:

Q. Where do you reside?

A. Lincoln, Nebraska.

Q. What is your business?

A. Newspaper man.

Q. Connected with what newspaper?

A. State Journal and News.

Q. And have you with you the files of the State Journal showing the regular publication of the State Journal for the period from July 1st to September 30th, 1887?

A. Yes sir.

Q. You may state if this is one of the regular files of the State Journal?

A. Yes sir.

Q. And is the current publication of the Journal of the date it purports to be?

A. Yes sir.

Q. I will ask you if the statement, or what purports to be a statement of the condition of the Capital National Bank published in the issue of the Daily Nebraska State Journal under date of August 6th, is contained in this file?

A. Yes sir, the statement is there.

Mr. NORVAL: We now offer in evidence Exhibit "a-5,"
Exhibit "a-5" is received in evidence.
(Copy follows.)

1644

EXHIBIT "A-5."

Nebraska State Journal, Saturday, August 6, 1887.

*Report of the Condition of the Capital National Bank at Lincoln,
in the State of Nebraska, at the Close of Business August 1,
1887.*

Resources.

Loans & Discounts.....	908,623.31
Overdrafts, secured and unsecured.....	6,231.69
U. S. Bonds to secure circulation.....	50,000.
Other stocks, Bonds and mortgages.....	15,281.
Due from approved Reserve Agents.....	75,189.86
Due from other National Banks.....	42,048.82
Due from State Banks and bankers.....	5,624.17
Banking House furniture and fixtures.....	5,650.
Other Real Estate and mortgages owned.....	2,192.88
Premiums Paid	6,200.
Checks and other cash items.....	45,349.70
Bills of Other banks.....	1,570.
Fractional Paper currency, nickels and cents.....	91.28
Specie	34,975.50
Legal Tender notes.....	16,108.
Redemption Fund with U. S. Treasurer, 5% of cir- culation	2,250.
	<hr/>
	1,217,386.21

Liabilities.

Capital Stock	300,000.
Surplus Fund	16,000.
Undivided Profits	3,447.66
National Bank notes outstanding.....	45,000.
Individual checks subject to check.....	454,253.97
Demand certificates of deposit.....	119,864.68
Due to other National Banks.....	201,760.43
Due to state banks and bankers.....	77,059.47
	<hr/>
	852,938.55
	<hr/>
	1,217,386.21

STATE OF NEBRASKA,
Lancaster County, ss:

I, R. C. Outcalt, cashier of the above named bank do solemnly swear that the above statement is true to the best of my knowledge and belief.

R. C. OUTCALT, *Cashier.*

Subscribed and sworn to before me this 5th day of August, 1887

[SEAL.]

J. W. MANVELL,
Notary Public.

Correct. Attest:

W. W. HOLMES,
D. E. THOMPSON,
C. W. MOSHER,

Directors.

1645 Q. Now I will ask you if you find in the files of the Nebraska State Journal the card or advertisement of the Capital National Bank during that same period?

A. Yes sir.

Q. And for how long was it a continued advertisement?

A. It was continued from day to day.

Q. I will ask you to state if this file of this paper is now in Court?

A. It is.

Q. And is the Nebraska State Journal a paper published at that time and of general circulation in this state?

A. Yes sir.

Q. I will ask you if Exhibit "a-6" is the notice that was continuously published in the State Journal at that time, of the Capital National Bank?

1646 A. Yes sir.

Mr. NORVAL: Plaintiffs offer in evidence Exhibit "a-6."
Exhibit "a-6" received in evidence.
(Copy follows.)

"Capital National Bank,
Lincoln, Nebraska.

Capital \$300,000.

C. W. Mosher, President.
H. J. Walsh, Vice President.
E. C. Outcalt, Cashier.

Directors.

W. W. Holmes,
D. E. Thompson,
C. W. Mosher,

R. C. Phillips,
E. P. Hamer,
C. E. Yates,

A. P. S. Stuart.

Accounts Solicited.
Banks, Bankers and Merchants."

1647 Q. I will ask you if the form of the notice was changed during that period?

A. Not during the period that I examined the book.

Mr. ROSE: What period does that cover?

A. To the end of the quarter,—September 30th.

Mr. ROSE: Of course Your Honor we object to this as immaterial. Objection overruled.

Each of the defendants excepts.

Q. You may state if Exhibit "a-7" is the same advertisement as "a-6".

Mr. BISHOP: It shows for itself.

Q. Was it published in the Nebraska State Journal of September 2nd, 1890?

A. Yes sir.

Q. And was that same notice continued to be published in the Nebraska State Journal during the period from 1887 to 1890?

A. I think it is, yes sir.

Q. You may state if you have in your possession the regular files of the Nebraska State Journal from July 1st to December 31 1890?

1648 A. Yes sir.

Q. You may state if the State Journal has succeeded to the Lincoln Evening News?

A. Yes sir, the State Journal owns the News now.

Q. And you may state if that paper was published in Lincoln the date—and the year it purports to be, 1890?

A. Yes, sir.

Q. You may state if there was any notice published by the Lincoln Evening News,—advertising card of the Capital National Bank of Lincoln, Nebraska, during that year?

A. Yes sir.

Q. You may state if the notice as published in the Lincoln Evening News for the year 1890 was similar in character, or the same as that published in the Daily Nebraska State Journal,—Exhibits "a-6" and "a-7"?

A. As near as I can see it is the same Ad'.

Q. And did that continue during the year?

A. I think so, yes sir.

Q. Now, Mr. witness, I will ask you if the book I now present you is the files of the Daily State Journal from July 1st to September 30th, 1890?

A. Yes, sir.

1649 Q. And you may state whether that is the regular files and records of the publication of the Nebraska State Journal for that time?

A. Yes sir, it is.

Q. Calling your attention now to Exhibit "a-8" I will ask you to state if that was published in the regular issue of the State Journal of date September 2nd, 1890?

A. Yes, sir.

Q. This article or advertisement—was it published in the regular issue of the Daily Nebraska State Journal on September 2nd, 1890?

A. Yes, sir.

Q. And at that time the Nebraska State Journal was a paper pub-

lished in the city of Lincoln, and in general circulation in the state?

A. Yes sir.

Mr. NORVAL: We offer in evidence Exhibit "a-8."

By Mr. BISHOP:

Q. Mr. Heblard, you had no part in obtaining these advertisements or cards?

A. No sir, not that I recall now.

Q. And you don't know by what means they got into the paper?

A. Not absolutely, no.

Q. And you don't know who furnished them to the paper?

A. No.

1650 By Mr. NORVAL:

A. They were paid for by the Capital National Bank as current advertisement?

Mr. BISHOP: The defendants object to that as leading, suggestive, and calling for a conclusion of the witness.

Q. How were they paid for?

A. The bills were made out and sent to the Capital National Bank, and the money came back; I never collected them myself.

Q. Just as every other advertisement?

A. In the regular course of business, yes sir.

By Mr. BISHOP:

Q. You had nothing to do with them yourself?

A. I had something to do with making the bills out and receiving the collections when they came back, but I wasn't the collector at that time.

Witness excused.

1651 Major J. D. Woods called as a witness on behalf of the Plaintiffs and being first duly sworn testified as follows, to-wit:

Direct examination.

By Mr. NORVAL:

Q. Where do you reside?

A. Here in Lincoln.

Q. How long have you lived in this city and vicinity?

A. I have lived in this city and county about 28 years and a half.

Q. What official position, if any, have you held in this county, in the past?

A. I was county clerk here four years.

Q. And as county clerk you may state if you remember the incident of the filing of certain chattel mortgages, or bills of sale in your office on or about the 23rd day of January, 1893,—the chattel mortgage from C. W. Mosher to D. E. Thompson—that is Mosher and his wife?

A. Yes sir, I recall of filing them.

Q. You may state who presented the instruments to you for filing?

A. There were two sets filed; the first ones by Charlie Mullen, and the second by William Dorgan.

Q. State to the court what time of day the first one was presented there for filing, and by whom presented.

1652 A. To the best of my recollection it was about 7:30 in the morning; it wasn't quite light yet. I had a little extra work to do at the office and was there a little earlier than we usually open the office,—we usually opened at 8 o'clock, but they weren't filed until 8 o'clock.

Q. Who brought the first one there?

A. Charlie Mullen.

Q. You may state whether or not that was a printed or typewritten instrument?

A. It was typewritten.

Q. About how many pages, if you remember?

A. Well I can't just tell now; there was two or more pages I should judge.

Q. Now you say it was a typewritten instrument. How was the date placed in the instrument purporting to give the date of the instrument; was it typewritten or written in ink?

1653 A. You see there was two instruments, one—

Q. I am speaking now of the first one.

A. Well there was a bill of sale from Mr. Outcalt and a chattel from Mr. Mosher. Now, one of them—my recollection is—it has been a long time ago; one of them was, I think it was dated about December 24th, and the other probably the 28th.

Q. The question is was the date placed in there with the typewriter, or pen and ink?

A. Pen and ink.

Q. The rest of the instrument, except the names and matters of that kind was all typewritten, is that right?

A. Yes sir, it was typewritten except the signatures and dating, yes sir.

Q. Well what did Mr. Mullen say when he came to have that instrument recorded, if anything?

A. Well he wanted them filed, and to keep them from the eyes of the public; he wanted them copied into the regular register and the original returned to him, which was done later.

Q. You said something a moment ago about keeping them from the public,—what did he say?

1654 A. He said he didn't want the public to have them.

Q. Now you may state what appearance the date on the instrument showed as to whether it had been there since the purported date, or whether it had just been made, from the appearance of the ink.

A. The ink of the dating of the two instruments, under the impression I had then and now that it was all Arnold's ink, which doesn't color black for sometime, all that was fresh done—the

datings, and not with the same parties whom signed it, or with the same ink.

Q. Now you may state if there was a duplication of those instruments brought there to you to be filed the same morning?

A. Yes sir, there was exact duplicates of both instruments fetched there in probably thirty minutes afterwards; it might have been a little sooner or later, but not far from that time.

Q. And the second one was written in typewriting to-, was it?

A. Yes, sir.

Q. And was that dated at all?

1655 A. No sir, they were not dated, neither one of them.

Q. And who brought the second duplication to you?

A. Mr. William Dorgan.

Q. And did you have any conversation with Mr. Dorgan at that time as to filing the same, or as to whether any other instruments had been filed of the same character that morning, and if so what was it?

A. I told him that there had been exact duplicates of what he had filed there,—been filed by Mr. Mullen and showed them to him; he looked at them a moment and he said he always obeyed orders and was told to file them and was going to do it. So he filed them.

Q. You may state, Mr. Wood, if you could tell from the ink at that time, its color or apparent freshness, whether it had been recently made or had been made for some time,—those brought by Mr. Mullen?

1656 Q. You may state with reference to the signatures from their appearance, as to whether they had been recently made, or had been written for sometime?

A. They had been written for sometime, the signatures had, with a different ink all together, and with a different pen.

Q. You may state if you are acquainted and have been for a number of years with one Watler T. Scott, that was formerly an employ- of the Capital National Bank,—a lame man?

A. Why I used to know Mr. Scott, when he was in the bank there. I haven't seen him for some time.

Q. Well you may state—

A. I don't really know that I would really know him if I was to meet him now, but I used to know him quite well.

Q. You know the person I am inquiring about?

A. Yes sir.

Q. You may state if you are acquainted with his general reputation for truth and veracity in this vicinity?

A. Why I never heard his truth and veracity disputed by anyone.

Q. Never heard it questioned by anyone?

A. I never have, no. As I say I haven't seen Mr. Scott or met him for sometime.

Q. You have lived in this city now for about 28 years, and never heard it questioned?

A. In the city and near about here.

* * * * *

1657 Cross-examination.

By Mr. ROSE:

Q. Mr. Woods, when did you take your office as county clerk, first?

A. Well now it was either the 5th or 6th of January, 1892.

Q. Prior to that time where did you live?

A. I had lived out southeast of town here on a farm.

Q. Where did you live at the period of time when you knew Scott as a bookkeeper of the Capital National Bank?

A. While I lived out on the farm. I used to occasionally have business through that bank.

Q. That is when you were on the farm?

A. Yes, sir.

Q. Had you had any acquaintance with him since he retired from his office as bookkeeper in the Capital National Bank?

A. Oh, I have seen him a number of times, but no business acquaintance with him.

Q. When do you think he retired from the bank?

A. Well now, I have seen the man a great many times since the bank closed up, but had no business with the man.

Q. Was he working at the bank up until the time of its failure?

A. Well I don't really know that he was,—I couldn't say.

Q. Had you seen him in the bank while you were holding the office of county clerk?

A. Well I couldn't say that I had.

Q. Had you seen him in the Capital National Bank subsequent to 1887?

A. That I couldn't say.

Q. You didn't have very much acquaintance with him when he was in the bank, did you?

A. I used to see him there quite often, but I never had any deposits of anything through that bank, but I used to go there with my neighbors.

1658 Q. How did you happen to see Mr. Scott, if he was keeping the books?

A. Well my first acquaintance with Mr. Scott was through a dispute with Mr. Mosher in reference to some notes that I gave for some land down there. Mr. Mosher disputed my word and so did Mr. Outcalt, and I told them to produce the notes, and they finally said they hadn't them.

Q. What year was that?

A. Oh, that was in '83,—that was my first acquaintance with Mr. Scott.

Q. That wasn't at the Capital National Bank?

A. Yes, sir.

Q. In 1883?

A. Well it might have been Marsh's at that time, but it was in the bank which Mr. Mosher run, and it was reorganized into the Capital National Bank not a great while afterwards.

Q. What was Mr. Scott's business after he quit the Capital National Bank?

A. I don't know.

Q. Did you ever have any business with him after he quit the Capital National Bank?

A. No sir.

Q. Did you know that he lived as an inmate of a charitable institution after he quit the Capital National Bank?

A. No sir.

Q. Never knew him at Tabitha Home?

A. No sir.

Q. Never knew what his conduct was there.

A. No sir.

Q. Don't know what he is doing today, do you?

A. No sir.

1659 Q. By what process do you ascertain the age of ink after it has dried on paper, Mr. Woods?

A. Well the Arnold's ink that we used to use you know when it was first put on paper left a greenish cast, and in the course of time it turned darker; that's all I know.

Q. Do you have any process by which you can tell the age of a signature or a date written in Arnold's ink?

A. No sir I can't, nor I don't think you can.

Q. Well, I can't. I just wanted to see whether you could.

A. But I do claim that when first written the Arnold's ink shows a greenish cast, and by age it turns black.

Q. What other kind of ink can you determine the age of?

A. I don't know that I can of any other ink, but you know that Arnold's ink had that peculiarity.

Q. I have seen Arnold's writing fluid, but when a signature was written in some other kind of ink,—how old was the signature of Mosher, or whoever wrote the signature?

A. I don't know.

Q. Was it six months old?

A. It might have been six hours, and it might have been six years for all I know.

Mr. ROSE: That is all.

By Mr. NORVAL:

Q. But it was written with different ink?

A. Yes sir, different ink and different pen.

By Mr. ROSE:

Q. How long does it take ink to dry, after you blot it?

A. It doesn't take long to dry.

Q. How long does it take to dry thoroughly?

A. Not long, but then Arnold's writing fluid is peculiar from any other that is made.

1660 Q. You spoke of this signature being older,—showing age, and I thought you wouldn't stand for that.

A. I said it had been written before that date. You take an ink,

any of those, and it is brighter and clearer than when it gets some age on it.

Q. Have you seen the books kept by Colonel Hale in this bank,—twenty five years ago?

A. No sir.

Q. Could you tell by looking at them that they were kept twenty five years *ago*?

A. No sir,—nor you either.

Q. You have never made any study of figuring out any way of testing the age of a written instrument, have you?

A. No, I never have; never had any occasion to.

Witness excused.

1661 J. F. BOOKSTROM called as a witness on behalf of the Plaintiffs and being first duly sworn, testified as follows, to wit:

Direct examination.

By Mr. THOMAS:

Q. Where do you live, Mr. Bookstrom?

A. Lincoln, Nebraska.

Q. What is your occupation?

A. Plumber.

Q. Are you a member of any firm that is in the plumbing business?

A. Yes sir.

Q. What is the name of that firm?

A. Newberg & Bookstrom.

Q. Where do they do business?

A. Lincoln, Nebraska.

Q. Where is your place of business?

A. Number 200 North Twelfth.

Q. How long have you been in that business in Lincoln?

A. Four years this Spring.

Q. Are you acquainted with Walter T. Scott?

A. Yes sir.

Q. Is he in your employ?

A. Yes, sir.

Q. In what capacity,—what does he do?

A. Bookkeeper, and taking care of the office.

Q. How long has he been in your employ?

A. A year and a half.

Q. And before you employed him did you make any inquiry in regard to his reputation for truthfulness and honesty?

A. Yes sir.

1662 Q. Now tell the court what is the nature of the work he does for you there, besides bookkeeping?

A. Why he takes care of the books, and also the cash and everything,—that is, he writes out the checks, but of course I sign the checks.

Q. And does he take in the money?

A. Yes sir, when it comes in.

Q. And put out the money?

A. Yes sir.

Q. Has the combination to your safe, in which you keep your money?

A. Yes sir.

Q. You spoke of making some inquiry in regard to his reputation. Do you know what his reputation is generally speaking in this community for truthfulness and honesty?

A. Only through what he — been doing for us, is all I know.

Q. You say you made some inquiry before you hired him?

A. Yes sir.

Q. You may tell the court what is his reputation for truth and honesty, whether good or bad?

A. Good.

Cross-examination.

By Mr. ROSE:

Q. You have heard his reputation questioned however, haven't you at numerous times?

A. Yes sir.

Q. Been frequently warned to keep a lookout for him, have you?

A. Yes sir.

1663 Q. And you have kept a lookout for him?

A. Yes sir.

Q. He has been laid off some lately, hasn't he?

A. No, not late, no.

Q. Well he has been absent, hasn't he, for periods of time?

A. Yes sir.

Q. Did you see how much money he brought back from Seward with him, about last January?

A. I didn't see.

Q. He told you didn't he that he brought thirty dollars?

A. Yes sir.

By Mr. THOMAS:

Q. Now it is true that the other side have been over to see you several times, have they not, about Mr. Scott?

A. They only seen me once.

Q. Who saw you?

A. Mr. Yates, I believe.

Mr. BISHOP: That is the young man?

A. Yes sir.

Q. Is he the only person that has talked to you?

A. Yes, sir.

Q. What did he talk to you about?

A. Just asked me about Mr. Scott's reputation.

1664 Q. Wanted you to testify that his reputation was bad?

A. No.

Q. What did he want you to do?

A. To tell the truth.

Q. Now you say somebody came to you and asked you,—talked to you about watching him?

A. Nobody came to us.

Q. I thought you said somebody came to you and told you to watch him?

A. That was this case with the Tabitha Home.

Q. And that matter was while he was working for you?

A. Yes.

Q. And some parties from the Tabitha Home came to you, or somebody connected with it?

A. Yes sir.

Q. And they're the ones that cautioned you to watch him?

A. Yes sir.

Q. And tried to get you to discharge him?

A. No.

Q. Did anybody ask you to discharge him?

A. No.

Q. Are you sure about that?

A. No, to look out for him.

Q. That is through the Tabitha Home matter?

A. Yes sir.

Q. Came about on account of him marrying a woman out there?

A. Yes sir.

The COURT: You say you have been warned to watch him. Now since you have been watching him what have you discovered?

A. Nothing at all; he is straight.

1665 Mr. E. HALLETT called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. BURR:

Q. You live in Lincoln?

A. Yes sir.

Q. For how long?

A. Pretty near forty years.

Q. And what is your business?

A. Jewelry.

Q. Been in that business ever since, I guess?

A. Yes sir, continuously.

Q. Do you know Walter T. Scott?

A. I do.

Q. A man who formerly was bookkeeper for the Capital National Bank?

A. Yes sir, that is where I first knew him.

Q. How long have you known him?

A. Since he was in the bank.

Q. While he was in the bank to—?

A. Yes sir, oh yes.

Q. You got acquainted with him while he was in that bank and have known him ever since, have you?

A. Yes sir.

Q. And during that time and at this time, do you know his general reputation for truth and veracity?

A. Why I never heard anything against him; what little dealings I have had with him he was perfectly straight.

Q. You haven't heard anything against his truthfulness or veracity?

A. No sir.

1636 Cross-examination.

By Mr. ROSE:

Q. Did you know Mr. Scott while he was an inmate of Tabitha Home out here for a period of ten years?

A. No, I didn't know of his being there at all.

Q. You didn't know that he had been out there?

A. I didn't know what he has been doing since he left the bank.

Q. That is since 1887?

A. I think that was in 1892; I think that was somewhere along about '92 when the bank failed.

Q. His own testimony is that he quit the bank in May, 1887?

A. Well maybe he did.

Q. Do you know anything about his domestic life now, or business life?

A. Nothing at all.

Witness excused.

1667 RICHARD H. CORNER called as witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. BURR:

Q. How long have you lived in Lincoln?

A. Since 1873.

Q. Since 1873?

A. Yes sir.

Q. And do you know Walter T. Scott, the man that used to be bookkeeper in the Capital National Bank?

A. I used to be pretty well acquainted with him.

Q. And have you known him all that time down to the present time?

A. Well I haven't known him lately not to be very close acquainted with him, I would see him occasionally.

Q. And are you at this time acquainted with his general reputation in this vicinity for truth and veracity?

A. Never heard anything against him.

Q. Never heard it questioned?

A. Never questioned at all.

Q. If it had been questioned you would have heard it as well as others,—that is his general reputation?

Mr. BURR: That is all.

Cross-examination.

By Mr. ROSE:

Q. Do you know where Mr. Scott lives now?

A. I don't.

Q. Do you know whether he is married now or not?

1668 A. No sir.

Q. Did you know about his living out at Tabitha Home for ten years?

A. I knew he was out there sometime; how long he was there I didn't know.

Q. Did you know of the controversies or the suits his life has brought him into lately?

A. I did not.

Witness excused.

1669 FRANK RAWLINGS called as a witness on behalf of the Plaintiffs and being first duly sworn, testifies as follows, to-wit:

Direct examination.

By Mr. NORVAL:

Q. Where do you reside?

A. In Lincoln.

Q. How long have you resided here?

A. Thirty three years.

Q. What is your business?

A. Well I aint doing much of anything now.

Q. What was formerly your business?

A. I used to be in the livery business.

Q. At what number?

A. Let's see,—it was one—something south Thirteenth—between "O" and "N" on Thirteenth street.

Q. You may state if you are acquainted with one Walter T. Scott, who was a bookkeeper at one time in the Capital National Bank?

A. Yes sir, I knew the old gentleman for 25 years I guess.

Q. And are acquainted with him now, are you?

A. Tes sir.

Q. You may state if you are acquainted with his general reputation for truth and veracity in the vicinity here where he lives?

A. I never heard a thing against the old gentleman in my life, and I have done thousands of dollars worth of business with him; I backed him in the laundry business once, and he has rented buildings of mine, and I done lots of business with him.

A. Yes, sir.

Q. How long have you lived in this county?

A. Since '73.

Q. Are you acquainted with one Walter T. Scott, formerly a book-keeper of the Capital National Bank, and now working for a plumbing firm here?

A. I am.

Q. How long have you known him?

A. If my memory serves me right he was on his farm out here when I came here in '73.

Q. On a farm?

A. Yes sir.

Q. But you knew him when he worked for the Capital National Bank?

A. Yes sir.

Q. And you know where he is working now?

1674 A. Yes sir.

Q. And you have known him more or less during that period and seen him from time to time?

A. Yes.

Q. I will ask you to state, Professor, if you know anything of his general reputation for truthfulness and honesty and integrity?

A. I never heard it questioned,—never heard it questioned. I always looked upon Mr. Scott as a man of integrity and reliability and truthfulness.

Q. And never heard anybody question or doubt it, or call it in question in any way?

A. Not that I remember of.

Cross-examination.

By Mr. ROSE:

Q. Mr. Fossler, how intimate an acquaintance have you had with Walter T. Scott?

A. Not very intimate; I knew him as I said when he was out on his farm.

Q. That was when you were a lad?

A. Yes sir, when I was a lad.

Q. When you were a lad out at Wolfe's?

A. No, no; north of town.

Q. How old were you then?

A. I would have to figure up first,—I was 17.

Q. You were a young man then,—a very young man.

A. Yes sir.

Q. You knew him when he was a bookkeeper in the Capital National Bank?

A. I knew him, yes sir; I knew that he was a bookkeeper there at the time.

1675 Q. And you never heard his honesty questioned, with that institution; never heard him accused of being an embezzler there?

A. No sir, not that I know of.

Q. Didn't know that he was an embezzler there?

A. No sir.

Q. Did you know him when he was in the laundry business?

A. Yes sir, I knew him when he was in the laundry business.

Q. Did you know that he was discharged from the bank?

A. I think not.

Q. Did you know him when he was an inmate for ten years of the Tabitha Home?

A. I think not.

Q. Had you ever known that he was out at Tabitha Home for any long period of time?

A. No.

Q. Did you know of his marrying about the time he left the Tabitha Home?

A. I think so.

Q. Did you know of the suit brought in connection with that marriage by the county attorney?

A. No.

Q. Do you know what his domestic life is now?

A. No.

Q. He doesn't move much in your circle does he,—among the University people, and people of refinement?

A. I only know him as a bookkeeper down there, and he sends me my bills when they work for me.

Q. From the earliest memory you have of him, have you known him as an excessively profane man?

A. No sir.

Q. Never heard that characteristic of him?

A. No.

1676 Q. You don't know much about him for the last ten or fifteen years, do you?

A. As I met him on the street, I knew his as an old acquaintance; that's all.

Q. That is you met him casually, but you haven't kept track of his life or anything of that sort?

A. No.

Q. Except that you know now he has a job with a plumbing firm.

A. I knew he was in the laundry, and I would meet him on the street; that's all.

Q. You don't know anything about the controversies he has had, and what people have said about his conduct and life?

A. No.

Q. You simply have not heard it discussed.

A. No sir.

Q. Have you noticed his name in the press of the city frequently in a derogatory way?

A. No, I can't say that I have; I wouldn't have remembered his initials; if I had seen it I wouldn't have known that he was concerned in anything of that sort.

Q. You don't know whether people have spoken derogatorily of his character for truth, or not?

A. No.

Q. Did you know he was expelled from the Tabitha Home?

A. No.

By Mr. THOMAS:

Q. You know that you never have heard anything against his character.

A. I know that.

Witness excused.

1677 Mr. LEW FRANKLIN called as a witness on behalf of the Plaintiffs and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. BURR:

Q. How long have you lived in Lincoln, Nebraska?

A. I came here in 1871,—about 39 or 40 years, somewhere in there.

Q. And do you know Walter T. Scott, a lame man?

A. I knew him, yes sir.

Q. Know him now?

A. Yes sir.

Q. About when did you first become acquainted with him?

A. Oh, I don't know; it has been quite a number of years; I don't remember.

Q. Did you know him while he was working in the bank as a bookkeeper?

A. Yes, sir.

Q. Do you know where he is working now?

A. Well I heard he was working on "N" street, in the basement in the McBride block.

Q. Have you seen him over there?

A. Well I just see him once in a while; very seldom.

Q. And are you acquainted with his general reputation for truth and veracity in the neighborhood where he lives?

A. I never heard anybody speak about it any otherwise.

Q. Never heard anyone question his truth and veracity?

A. No sir, I never did.

Q. Mr. Franklin, do you know who occupied the old frame building at the corner of Eleventh and "N" street, when the frame building was there?

1678 A. I was there part of the time.

Q. What was your business?

A. I was in the Tea business.

Q. You remember the time when they moved the frame building and built the Capital National Bank building?

A. Yes sir.

Q. Did you ever go into the bank, and observe the vaults, the two vaults back at the south end of the rooms in there, and about the size of them?

A. Yes sir, I was in there; I went in there quite a number of times to see somebody.

Q. Do you remember which side the safty vault was on, and which side the bank vault?

A. There was a bank vault behind the counter.

Q. Do you have remembrance of the little room that was off the foyer, you might call it,—where the public would go into?

A. Yes sir.

Q. About how large was that room?

A. Oh, I should judge it was 10 x 12 probably,—a small room.

Q. Was there anything in this little room?

A. Why I think a table.

Q. And chairs?

A. Chairs, yes sir.

Q. For people using the vault to use, I suppose?

A. I think so.

Cross-examination.

By Mr. ROSE:

Q. What has been your business for the past ten years?

A. Well I have been identified with a Tea and Coffee company on Thirteenth street,—the Oriental Tea and Coffee company.

1679 Q. Have you got an interest in the business?

A. No sir, only a little working interest.

Q. Did you know Mr. Scott intimately?

A. Oh, I have met him a great many times,—just off and on, to speak to him, and he to me.

Q. Were you acquainted with that business he has been in from time to time in the last ten years.

A. No.

Q. Who told you he was working in — at a plumbing shop, Mr. Burr?

A. No, I knew it because I have seen him going down in there.

Q. How often did you see him while he was at Tabitha Home?

A. Never saw him.

Q. Did you know that he was out there for ten years, at the Tabitha Home?

A. Well I heard he was out there.

Q. Do you know anything about what his life was out there the character of his life?

A. No sir.

Q. How recently have you heard that he was out at the Tabitha Home?

A. Oh I have known it a long time.

Q. Did you know of his marriage after he left Tabitha Home?

A. No sir.

Q. Did you know he was expelled from the Tabitha Home?

A. No sir.

Q. Do you know what reputation he bore while he was out at Tabitha Home for a period of ten years?

A. No sir.

Q. You didn't know about his recent marriage?

A. No sir.

1680 Q. Or the recent suits he has had?

A. No sir.

Q. Never heard it was charged against him that he was an embezzler while he was in the Capital National Bank?

A. No sir.

Q. Never heard that he was charged with marrying an insane patient of the Tabitha Home?

A. No sir.

Q. Never heard of this suit that was of general publicity, brought by the county attorney to annul that marriage?

A. No sir, I did not.

Q. You never had any very intimate acquaintance with Mr. Scott?

A. Oh just to speak,—a speaking acquaintance,—just as I passed him on the street; I used to meet him on the street.

Q. You don't know what mischief he has been in?

A. No, I don't know nothing about that.

Q. Now did you have a box in the safety deposit vault?

A. No sir.

Q. Do you remember of any occasion when you were in that room while it was in operation?

A. No, I went in to see Dick Outcalt.

Q. And that is the only instance you can remember of being in there?

A. Oh I was in there quite a number of times.

Q. You were in the bank several times, but I mean in the customers' room at the entrance to the vaults,—the customers' vault,—how many times were you ever in that room?

A. Oh two or three times probably.

Q. Did you ever see more than one chair in there?

A. Well I know I sat down on one I guess.

Q. Well as a matter of fact, wasn't there just one chair in there and only a little table, accommodations for one person only
1681 in that room?

A. Well I can't just remember about that.

Q. Do you know whether the door to that little room was kept locked or not?

A. Well it wasn't when I went in there.

Q. You could go right in without a key could you?

A. Yes, sir.

Q. Are you quite sure what the room was that you went into?

A. Yes sir, I went in to see Dick Outcalt.

Q. Well he didn't stay in that little room?

A. Well he sometimes stayed up in front.

Q. You took him back to that little room to talk to him?

A. No, I didn't take him back.

Q. Did he take you back there?

A. No sir.

Q. Did you have an appointment to meet him there?

A. No sir, I just went in there and asked where Dick was, and they said he was back there.

Q. Did you find the door locked?

A. No sir.

Q. Do you know how wide that room was?

A. Ten or twelve feet.

Q. Along the banking room,—do you know how wide the banking room was?

A. Oh, I should say 25 feet.

Q. Do you know?

A. No, I don't know.

Q. When that bank building was built was the whole Academy of Music block built at the same time, or just the front on Eleventh street?

A. I think it was all built at the same time.

1682 Q. Wasn't there a 22 foot building erected first and then the other building extended from that?

A. Oh, I don't remember now about that.

Q. How wide do you think the lobby was at the south end of the banking room,—outside of the bank counter?

A. Ten or twelve feet.

Q. Do you think it was over six?

A. Oh yes, there was quite a little room there.

Q. Which portion of the room occupied the most space, the part occupied by the clerks or the part constituting the lobby?

A. Why I think the clerks.

Q. You wouldn't say that whole room was over 20 feet wide in the clear would you?

A. Which, the banking room?

Q. Yes sir, the room that was subsequently occupied by the Rock Island ticket office.

A. I should think it was.

Q. Well what do you think was the clear width of that room?

A. I think probably about 20 feet.

Q. And in the division for the public and the work room, the work room occupied the larger portion of that?

A. Oh yes, yes sir.

Witness excused.

1683 It is agreed that *the testimony of Otto Newberg* for whom Walter T. Scott is now employed will testify, and his testimony will be the same as to reputation for truth and veracity of the witness Walter T. Scott, as was given by the witness Bookstrom.

1684

February 16, 1911—9 a. m.

Mr. THOMAS: Plaintiffs offer in evidence, that portion of Exhibit X-21, the first column indicating the names of the assets and liabilities, and the last column on the same double page giving the amounts of the assets and liabilities, under date of Saturday October 1st, 1892; the two columns being identified by the reporter as Ex-

hibit "a-9" and Exhibit "a-10", the offer to include the lead pencil check marks and figures.

* * * * *

1685

"EXHIBIT A-9." EXHIBIT "A-10."

SATURDAY, Oct. 1, '92.

Capital Stock.....	300,000.	[✓]*
Surplus a/c.....	6,000.	[✓]*
U. S. Bond a/c.....	✓50,000. ✓	
Circulation a/c.....	45,000.	[✓]*
Redemption Fund.....	✓ 1,250. ✓	
Stocks & Bonds a/c.....	✓ 325. ✓	
Furniture a/c.....	✓ 5,770. ✓	
B/R	678,773.67✓	
Cash	66,595.87✓	
Bills of Exch.....	✓ 2,928.38✓	
Chemical Nat. Bank.....	✓28,017.33✓	
American Exch. Nat. Bank....	✓19,601.51✓	
U. S. N. B.,—Omaha.....	✓16,544.51✓	
South Omaha N. B.....	✓ 390.98✓	
Packers N/B So. Omaha.....	✓ 59.34✓	
First N/B Kansas C.....	✓ 691.73✓	
Schuster Hax N/B.....	✓ 310.94✓	
Merchants N/B N. C.....	8,089.32	[✓]*
First N/B, Beatrice.....	2,404.37	[✓]*
Bank of Cass County.....	✓ 28.26✓	
Kountz, Nachod & Kuhne.....	✓ 233.29✓	
Clearin ^g House a/c.....	1,339.09	[✓]*
Walsh & Putnam.....	✓ 2,800. ✓	
Undivided Profits.....	2,681.	[✓]*
Rediscount a/c.....	9,969.67	[✓]*
Real Estate.....	✓95,370.47✓	
Discount, Int. & Exchange.....	11,935.94	[✓]*
Wages a/c.....	✓ 4,773.32✓	
Suspense a/c.....	15.94	[✓]*
Interest Paid a/c.....	✓ 7,226.45✓	
Expense a/c.....	✓ 3,303.52✓	
	784,997.57	384,781.14
Deposit a/c.....	600,216.43	
		✓
	984,997.57	984,997.57 [✓]*
	28,563.54	

[*Erased in copy.]

1686 Mr. THOMAS: Plaintiffs offer in evidence the following portions of the testimony of Mr. Outcalt in the case of Kent K. Hayden Receiver against David E. Thompson and the other defendants in this action, and others, tried in the Circuit Court of the United States for the District of Nebraska, some time during the year 1897.

Mr. ROSE: Each of the defendants object- to the offer of the testimony as hearsay, incompetent, no foundation laid; not taken in any manner authorized by law to entitle it to be received in this case, nor taken in any proceeding had between the same parties nor under the same issues, nor authenticated in any manner whatever to entitle it to be received, and not binding upon either of these defendants, and in a matter and action entirely between other parties.

We admit that the testimony, or purported testimony of R. C. Outcalt in the record presented here in court bears the signature of R. C. Outcalt, written in his own hand at page 790 thereof; said testimony beginning at page 704 and extending to an- including page 790.

Mr. THOMAS: It is not contended on the part of the plaintiffs that the parties to this suit were the same, nor that the issues were the same, and all that is contended is that the Receiver in that case brought an action against the parties in that action who are 1687 the defendants in this action, and that this testimony here pertains to matters which are involved in this action, and we contend that it ought to be admissible as being an admission of Mr. Outcalt, and as such, evidence against the defendants in this action upon the theory that it is an admission of a joint tort feisor.

Mr. ROSE: On that theory our previous admission is that it is the signed declaration and bears the genuine signature of Mr. Outcalt, and we further admit that the record here present is the record of M. Outcalt's evidence taken in the suit referred to and prosecuted in the Circuit Court of the United States for the District of Nebraska.

But with this admission we still insist on the objections that it is hearsay, incompetent, no foundation laid; not taken in any manner authorized by law to entitle it to be received in this case, nor taken in any proceedings had between the same parties nor under the same issues, nor authenticated in any manner whatever to entitle it to be received, and not binding upon either of the defendants, and in a matter and action entirely between other parties.

Objection overruled.

Each of the defendants excepts.

The testimony offered is received and read as follows:

* * * * *

1688 Question No. 1543. Where were these books that you kept—where were they kept?

A. Their usual place, you mean?

Question 1544. Yes.

A. That is on my desk in the day time. I suppose in the vault with the other books at night.

Question No. 1545. Were they exhibited to the stockholders and directors?

A. Yes sir.

Question 1546. Were they frequently examined by them?

A. Yes sir, you can see Prof. Stuart's finger marks all along on that book now if you examine carefully.

Question No. 1547. Where were the other books of the bank generally kept?

A. They were on the other book-keeper's desks in the bank.

Question 1548. Were they generally examined by the stockholders and directors?

A. They had access to them; I don't know that they examined them particularly.

Question 1550. It would take an expert bookkeeper to tell much about their books wouldn't it?

A. Oh no, I don't think so.

Question 1559. Did the bank have a discount committee?

A. No sir, not exactly, as we would understand a discount committee. They had a committee to examine the loans of the bank.

1689 Question 1560. Do you remember who was on that committee?

A. The first committee that was appointed was W. W. Holmes, and A. P. S. Stuart. After Mr. Holmes died Dr. Hamer was put in his place by the Board of Directors.

Question 1561. Did these members of that committee ever examine those loans and look over the bills receivable and paper of the bank?

A. Yes sir, quite frequently.

Question 1562. How did they do that? Was the paper listed or did they look over the paper itself?

A. Well I don't know that they ever listed it, or ever made a complete list. They would take the pocket book in which these were kept and retire to the back room of the bank and go over them.

Question 1563. Did they ever make any report to the Board of Directors as to what the results of their investigation or examinations were?

A. At a directors' meeting?

Question 1564. Yes.

A. I don't remember that it was done at a Directors' meeting, though perhaps it was.

Question 1569. Were the books of the bank and the paper all open to the examination of the directors, and this discount committee?

Question No. 1613. I now hand you a bundle of notes purporting to be signed by the Western Manufacturing Company, E. Hurlbut Jr. Manager, that were executed to the Capital National Bank, amounting to \$230,000 and I will ask you if you have ever seen those notes before, and whether they constituted a part of the bills receivable of the bank at the time you were in there?

A. I never saw these notes before. That is before the failure I

never saw these notes that I know of except \$35,000. \$35,000 of those notes were carried by the Capital National Bank. I don't say those, but notes signed in that way. It is pretty hard to 1690 distinguish. It is probable it was some other notes, but \$35,000 of such notes were put into the bank by C. W. Mosher and he spoke to me about it after they were in, and said he was short about that much in his deal between the two manufacturing companies, and he wanted to have those notes carried in the bank. I told him so far as I was concerned I didn't have any objection, but there might be some objection and I thought he ought to speak to the directors about it. I don't remember how long it was before a directors' meeting, but it occurs to me now it was just a short time, and it was brought up by himself, and presented at this directors' meeting and the notes were produced. The directors said if he would endorse those notes they would consider them perfectly good and would have no objection to their being carried. He also stated in that meeting that he had collateral securities for those notes and as fast as they were collected they would be paid.

Question No. 1627. And did you ever notice that these notes of the Western Manufacturing Company to the amount of \$755,000 had been issued from time to time?

A. No sir, I would not have seen that amount there if I had looked it up, because many of them must have been renewals. I might have notice- those notes going through the bank and supposed them to have been the original \$35,000 worth of notes.

Question 1628. Do you know how long the \$35,000 of original notes was in the bank?

A. No sir, they might have been in there some time before he spoke to me about them, or before it was brought to the notice of the directors.

Question 1629. Do you remember how long before the failure of the bank it was brought to the notice of the directors?

A. I think it must have been a year and a half or two years.

1691-1765 Question 1630. Isn't it true that those were put in there at or about the time that the corporation was organized of which Mr. Welch was secretary and treasurer, and about the time that the corporation brought out the old Western Manufacturing Company?

A. My memory is that it was about that time, because his excuse was that that was what it was for.

Question 1632. It may have been further back than you give it, a year and a half of two years before the failure of the bank?

A. That would only make it two years.—yes, it would be three years before the bank failed.

* * * * *

1766 Mr. GEORGE DOBSON called as a witness on behalf of the Plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. THOMAS:

Q. Where do you reside?

A. Ulysses, Butler county, Nebraska.

Q. What is your occupation?

A. Banking business principally.

Q. With what bank are you connected?

A. First Bank of Ulysses.

Q. How long have you been in the banking business?

A. Twenty four years.

Q. Were you engaged in the banking business during the year 1893?

A. Yes sir.

Q. Are you acquainted with the defendant Mr. Thompson?

A. Yes sir, I met him a number of times.

Q. Now you may state whether you remember of having met him anywhere during the month of January, 1893?

A. I met him in Lincoln in the Capital National Bank.

Q. About what time during the month, as near as you can recall?

A. It was in '93; I was thinking it was in '92.

Q. Well with reference to the failure of the bank?

A. It was within ten days to the best of my recollection; it was about the Monday before the Capital National Bank failed.

1767 Q. Where was Mr. Thompson at that time?

A. He was in the office of the Capital National Bank then. in the office in the front part of the bank.

Q. What were you doing in the bank?

— — —
Q. How did you happen to be in the bank that day?

A. The bank was our correspondent and I was there in Lincoln and I went in to see Mr. Mosher or Outcalt in regard to getting some rediscounts or loans.

Q. Where was Mr. Thompson when you went in?

A. In the front part of the bank, in Mr. Mosher's private office.

Q. Now you may state if you met Mr. Thompson there?

— — —
Q. Who was it presented you to him?

A. I was introduced by Mr. Mosher to Mr. Thompson.

Q. You may state what was said by Mr. Mosher in the presence of Mr. Thompson?

1768 A. Mr. Mosher — I was in the bank talking with Mr. Outcalt and as I was going out he motioned for me to come there and he said he wished me to meet Mr. Thompson, one of his principal stockholders, and I shook hands with Mr. Thompson; I had known Mr. Thompson previously however.

Q. Where were Mr. Thompson and Mr. Mosher while you were talking to Mr. Outcalt, when you first went in?

A. They were both standing up in the office talking very confidentially in front of the window looking out on the street.

Witness excused.

1769 Mr. H. T. JONES recalled.

Direct examination.

By Mr. THOMAS:

Q. Have you made an examination of the books in court of the Capital National Bank concerning bills receivable taken into the bank which were executed by various parties in York county and adjoining counties and which the books purport to show to have been negotiated through E. W. Mosher, or Stark & Mosher?

A. I have.

Q. Have you gone through all the discount registers that are here to make a list of such notes?

A. I have.

Q. And did you examine to see whether those notes were taken into and became a part of the bills receivable and assets of the Capital National Bank?

A. I have.

Q. Were the notes to which you refer taken into and became a part of the assets of the Capital National Bank, as shown by their books?

A. They did.

Q. And how do you ascertain that they were taken in as a part of the assets of the bank; what is there to show it on the books of the bank?

1770 Mr. ROSE: You are not offering this as rebuttal evidence?

Mr. THOMAS: Well I think this is proper rebuttal.

Q. Now I hand you *you*, Mr. Jones, Bills Discounted Register of the Capital National Bank, which has been identified as Exhibit X-25 and will ask you if a portion of the notes to which you have referred appear on pages 305-6-7-8-9 and 310 of that register?

A. In part, and then it is carried forward to another place in the book.

Q. Carried from there to page 276?

A. Yes sir.

Q. And does this record show that the makers of these notes reside in York county principally?

A. Yes sir, the majority of them do.

Q. And what appears at the head of the page,—what name?

A. It shows the account of Stark & Mosher notes.

Q. Does it show them to be the makers of the notes?

A. No sir, it shows that the notes were given to them.

Mr. THOMAS: Now I want to exhibit this book to the Court, and it being so voluminous we will offer a schedule of the pages.

(Book handed to the Court.)

Exhibits "11-a" to "15-a" identified.

Q. I hand you exhibits, Mr. Jones, numbered from "11-a" to "15-a" inclusive and will ask you if those schedules were compiled by you from the books of the Capital National Bank, showing notes negotiated through Stark & Mosher, and E. W. Mosher, which you say entered into and became a part of the assets of the Capital National Bank?

A. Yes sir.

Q. These schedules were taken from the books of the bank which are in court at this time?

A. Yes sir.

1771 Mr. THOMAS: We offer in evidence schedules Exhibits "11-a" to "15-a" inclusive.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and no foundation laid.

Objection overruled.

Each of the defendants excepts.

Exhibits offered are received in evidence.

(Copies follow.)

Notes, E. W. Mosher.

Date.	Bk. B/R.	Page.	No.	Amount.	Name of maker.
1886, Nov. 2.	"A"	16	15732	502.75	H. M. Woolman.
1885, Nov. 11.	...	19	15920	400.	W. Hice.
Jan. 22.	15921	500.	D. Meloy.
'86, Nov. 2.	220	...	20986	502.75	H. M. Woolman.
'87, Sep. 14.	29857	500.	.....
'86, Oct. 18.	30265	300.	.....
.....	7	300.	.....
.....	8	300.	.....
'87, Aug. 26.	"2"	...	35626	300.	Edward Glein.
Sep. 7.	...	150	38450	500.	Thos. Jacobs.
'88, Dec. 8.	...	260	43976	500.	C. E. Nobes.
'87, Aug. 26.	...	275	44700	500.	Edward Glein.
Sept. 7.	...	305	46225	1,000.	Thos. K. Jacobs.
'89, Mar. 18.	"3"	110	73007	600.	J. E. Doty & W. Liesle.
May 24.	...	130	75007	2,500.	W. C. Franz.
'90, Mar. 26.	...	153	77191	75.	L. C. Lloyd, et al.
'89 Nov. 6.	...	190	81003	507.50	Lewis S. Lesle.
Dec. 10.	...	200	82003	1,500.	Chas. M. Donovan.
Jan. 26.	...	243	94186	300.	W. H. Barslow.
Feb. 13.	98	571.50	W. A. Dean.
15.	...	254	95212	185.	W. H. Martin.
19.	95213	32.25	F. Week & R. Plummer.
May 9.	...	256	305	25.	Robt. Florer.
May 9.	...	256	305	25.	Robt. Florer.
Jan. 27.	...	270	97017	60.	Chas. Green & C. Biggs.

Date.	Bk. B/R.	Page.	No.	Amount.	Name of maker.
May 1.	...	273	171	21.10	John Nevils.
Mar. 1.	2	34.35	Will Smith.
Apr. 22.	3	73.32	H. Harding.
May 7.	84	67.50	N. A. Dean.
Feb. 19.	...	280	98019	2,125.40	W. M. Daniels.
1773					
Feb. 7.	98020	500.	W. A. Beverage.
Mar. 5.	21	83.10	Peter Bohm.
'91, Feb. 19.	"3"	280	98029	2,000.	Wm. McDaniels.
Apr. 10.	...	281	86	28.	H. & J. Fountain.
May 9.	...	282	98126	105.	A. & F. Blodgett.
'90, Sep. 1.	...	290	99012	25.	R. S. Mindand.
'91, Apr. 22.	42	581.41	A. F. Meager.
'90, Oct. 1.	43	25.	Chas. Dye.
'91, Apr. 21.	45	52.	E. Wendalt.
22.	46	39.20	J. I. A. Frazier.
Mar. 17.	47	12.	G. Statts.
7.	48	65.70	J. Catselt.
Apr. 1.	49	42.10	J. R. Seagrist.
Mch. 20.	302	20.	W. H. & T. W. Weiswell.
Apr. 6.	6	13.60	J. P. Richards.
25.	7	107.40	Wm. Werbaugh.
11.	8	50.	John & Mary Meagher.
10.	9	12.35	C. E. Marble.
25.	40	69.15	J. W. Donovan.
'89, Nov. 6.	...	315	46417	101.50	Lewis S. Lusk.
"	18	101.50	" "
Dec. 12.	21	1,000.	Mary A. Meager.

1774

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12.	...	49	1,020.	"	"
12.	...	46450	1,403.42	"	"
Oct. 21.	...	1	200.	Wm. McDaniel.	
"	...	2	200.	"	
"	...	3	200.	"	
"	...	4	300.	Chas. M. Donovan.	
Dec. 10.	...	5	500.	"	
"	...	6	500.	"	
"	...	7	600.	"	
"	...	8	500.	S. L. Wright.	
Oct. 21.	...	46463	200.	Wm. McDaniel.	
Dec. 10.	...	64	400.	Chas. M. Donovan.	
'91, Feb. 3.	...	46612	120.	Adam Faul.	
1.	...	13	102.	Edward & A. Morris.	
6.	...	14	162.94	Geo. D. Pence.	
7.	...	15	578.41	Daniel Maloy.	
7.	...	16	578.41	"	
28.	...	46625	102.90	J. W. Kingston & C. E. Merch	
"	...	26	68.	Jasper Connett et al.	
Mar. 1.	...	27	16.50	Robt. Bodman.	
"	...	28	46.80	J. W. Rider.	
Feb. 7.	...	29	51.02	David Maloy.	
"	...	630	49.	"	
Mar. 4.	...	31	250.	W. H. Browns.	
"	...	32	250.	"	
"	...	33	34.50	John W. Rider.	
"	...	34	31.50	"	
Feb. 7.	...	35	49.	David Maloy.	

Date.	Bk. B/R.	Page.	No.	Amount.	Name of maker.
Jan. 16.	46646	1,000.	C. A. & Wm. McDaniels.
Feb. 24.	47	132.	Eli Nixon.
Mar. 26.	48	162.75	Soupher & Schall.
Apr. 2.	49	1,000.	W. H. Barstow.
Jan. 27.	B./R.	Page.	97017	60.	C. Green & T. Biggs.
May 20.	"4"	8	171	21.10	John Nevel.
Mar. 1.	2	34.35	W. Smith.
Apr. 22.	3	73.32	H. Harding.
Mar. 7.	84	67.50	N. A. Dean.
Feb. 19.	...	13	98019	2,125.40	Wm. McDaniels.
7.	20	500.	W. A. Beverage.
Mar. 5.	21	83.10	Peter Bohn.
Feb. 19.	29	2,000.	Wm. McDaniels.
Apr. 10.	...	14	86	28.	H. & K. Fountain.
May 9.	...	15	98126	105.	A. & F. Blodgett.
'90, Sep. 1.	...	18	99012	25.	R. L. Winland.
'91, Apr. 23.	42	481.41	R. E. Meagher.
Oct. 1.	43	25.	Charles Dye.
Apr. 25.	45	52.	N. Wednalt.
Apr. 22.	46	39.20	J. L. A. Frazier.
Mar. 17.	47	12.	Green & Statts.
May 7.	48	65.70	J. Catrall.
Apr. 1.	49	42.10	J. R. Siegrist.
1.	...	22	19243	104.16	Thos. Jones.
Jan. 2.	4	52.40	Peter Ehler.
"	5	38.25	E. H. Underhill.

1775

July 3.	...	6	35.	John Neville.
Mar. 20.	...	7	85.	S. J. Smith.
Apr. 6.	25	100,135	20.	W. H. & F. H. Weiswell.
Apr. 25.	...	6	13.60	J. P. Richards.
11.	...	7	107.40	Wm. Westbaugh.
10.	...	8	50.	John & Mary Meagher.
25.	...	9	12.35	C. E. Marble.
July 8.	29	40	69.15	J. W. Donovan.
6.	...	100,309	145.	B. F. Wood.
1.	...	10	67.90	E. F. Cavanaugh.
Apr. 10.	30	22	500.00	C. E. Van Dueshen.
Jan. 1.	...	101,016	125.	H. W. & F. E. Palck.
Apr. 2.	...	17	17.70	A. H. Parker.
Nov. 16.	...	26	500.	W. H. Barstow.
'89, Oct. 17.	35	35	101.50	Lewis S. Leach.
May 1.	40	101,283	51.75	Gus R. Nisser.
Feb. 28.	...	102,010	104.	Geo. W. & E. B. Woods.
Jun-23.	...	37	102.90	J. W. Kingston.
29.	41	38	68.	Jasper Connett et al.
19.	...	102,056	56.95	E. E. Sutton.
	...	57	56.70	May A. Doody.
	...	58	100.	Henry Fry.
1776				
'91, Apr. 25.	450	111,007	138.80	N. Wendall.
14.	...	8	40.	Wm. Aldrich.
Mar. 20.	...	9	13.	M. J. Keys.
Jun-15.	...	15	100.	Elmer Cameron.
Oct. 7.	52	111,127	8.20	Horace Wellington.
1.	80	114005	79.91	David George.

Date.	Blk. B/R.	Page.	No.	Amount.	Name of maker.
6.	...	90	115,001	131.15	Nelson Blue.
Aug.	115,002	555.80	"
July	...	306	1024	107.	G. M. Bowers.
Oct.	36	491.	Thos. Jones.
Apr.	37	150.	Anna C. & H. Branz.
6.	38	150.	"
"	39	150.	"
'92, Sep.	...	310	1221	250.	Mary A. Meacher.
1.	2	453.50	Samuel C. Kline.
Feb. 13.	3	205.33	Wm. Dattel & R. B. Price.
July	4	250.	"
"	25	250.	"
"	6	250.	"
Jun-26.	7	200.	Geo. K. & P. A. Everts.
"	8	200.	"
"	9	300.	"
"	30	200.	do.
"	1	300.	do.
12.	2	100.	John A. & Sarah A. Johnson.
"	3	100.	do.
"	4	136.	do.
"	35	100.	do.
"	6	100.	do.
"	7	100.	do.
"	8	100.	do.
"	9	1,100.	do.
July	1244	150.	L. C. Yolan.

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'91, Jan. 16.	...	315	46650	122.50	M. C. & A. McDaniel.
"	1	36.80	do.
Mar. 20.	2	64.25	C. A. & J. B. Clabby.
Apr. 2.	3	1,300.	W. H. Barstow.
Mar. 20.	...	...	4	62.50	C. A. & J. B. Clabby.
"	...	...	46655	90.	do.
Apr. 25.	...	...	6	142.80	Geo. Barstow.
2.	...	...	7	500.	W. H. Barstow.
2.	...	...	8	500.	do.
'89, Dec. 12.	...	...	46671	1,403.42	M. A. Meagher.
"	...	...	2	200.	Wm. McDaniel.
Oct. 21.	...	...	3	200.	do.
"	...	...	4	200.	do.
"	...	...	75	300.	do.
"	...	...	6	500.	C. N. Donovan.
Dec. 10.	...	...	7	500.	do.
"	...	...	8	600.	do.
"	...	...	9	500.	do.
"	...	...	46680	400.	do.
"	...	...	1	1,300.	A. Van Tyl et al.
'83, Jun. 1.	...	...	2	400.	M. T. Pennington.
'90, Mar. 1.	...	...	3	250.	do.
"	...	...	4	350.	"
"	...	...	85	500.	"
"	...	...	7	200.	Eli Nixon.
8.	...	...	1	110.	Eli Nixon.
Apr. 7.	...	...	9	140.	"
"	...	...	46690	250.	"

Date.	Bk. B/R.	Page.	No.	Amount.	Name of maker. “
'91, Jul- 6.	...	316	1	310.	Nathaniel Elliott.
1778	...		46732	373.50	
'93, Jan. 13.	"4"	276	1262	300.	Charles F. Bennard.
"	3	150.	do.
"	4	150.	do.
"	65	150.	do.
"	6	150.	do.
Jul- 13.	7	150.	do.
Jun- 13.	8	150.	do.
"	9	150.	do.
"	1270	150.	do.
"	1	150.	do.
"	2	150.	do.
"	3	200.	do.
Total.....				59,726.93	

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1779

EXHIBIT "12A."

Stark & Mosher Notes as Shown by Bills Receivable Register No. 2.

Date.	Page.	No.	Amt.	Name of maker.
1887, Aug. 1.	29	32448	115.25	John Hyland.
Sept. 2.	30	473	240.	A. L. Johnson.
Aug. 31.	...	4	15.70	Philip Kennedy.
Sept. 17.	...	85	315.70	Geo. D. Moore.
.....	...	94	11.	A. H. Campbell.
24.	...	6	52.88	Ed L. Ely.
26.	31	32503	117.20	P. H. Fenger et al.
30.	...	17	240.	First Nat. Bank.
Aug. 1.	...	8	3,500.	I. N. Contsell.
Sept. 19.	...	9	185.50	W. D. Earls.
Oct. 3.	...	32520	700.	M. D. Welsh.
3.	...	1	500.	R. H. Mitchell.
1.	32	60	246.80	L. S. Loomer.
1.	...	32580	89.90	C. H. Young.
15.	33	612	47.60	A. I. Gilmore.
.....	...	3	115.	John Widle.
8.	34	32678	1,800.	Henry A. Mengher.
27.	...	86	53.60	Geo. Everts.
28.	...	7	30.50	Henry Operloh.
29.	...	8	95.70	A. C. Kaheffey.
.....	...	9	159.90	T. M. Galaway.
27.	...	90	127.20	Andrew Striebe.
Nov. 1.	35	32718	90.	E. D. Parsons.
.....	...	9	45.20	F. P. Parker.
4.	...	.....	100.	G. L. Laws.
1.	...	32727	50.	Alfred Swiss.
5.	...	8	65.50	W. Meredith.
7.	...	35	92.20	P. Wilson.
.....	...	...	212.50	Southworth & Forste-
.....	36	32750		Burg.
.....	...	1	300.	C. E. Forsteburg.
16.	...	63	300.	France & Harlan.
1887, Nov. 30.	37	32806	100.	A. R. Fisher.
.....	...	7	60.65	I. E. Phillips.
28.	...	8	45.	S. M. Johnson.
29.	...	9	12.	Wm. Westbrough.
Dec. 1.	...	32828	187.95	S. F. Wood.
2.	...	9	27.20	A. M. Ottis.
1.	...	36	105.20	Dustin Scudder.
7.	...	7	76.	Austin Lindsay.
13.	...	47	102.75	A. D. Freeman.
24.	...	32876	13.55	S. A. Lerseck.
.....	...	7	250.	Wm. Clarke.
Feb. 3.	45	32201	75.	G. Bowersack.
Aug. 22.	...	26	222.10	Peter Kelley.

	27.	...	7	490.	Josiah ePters.	
	29.	...	33231	200.	Peter M. Blair.	
Sep.	10.	...	35	125.	Dowell Heaton.	
Nov.	1.	46	33265	100.	Sarah I. Bingham.	
	5.	...	92	129.90	I. W. Askew.	
	1.	47	33331	213.20	James Powersok.	
		...	2	334.20	W. B. Ronald.	
	12.	...	3	1,013.10	J. W. Underhill.	
	17.	...	4	1,081.	M. C. Frank.	
	21.	...	33397	92.75	Thos. Blubknor.	
Dec.	1.	49	33423	220.	John Neville.	
	12.	...	45	105.10	A. D. Simmons.	
		...	7	46.60	Julia Corcoran.	
	22.	50	33475	44.70	F. Rafferty.	
	23.	...	6	36.	S. M. Johnson.	
	1.	...	80	697.20	S. W. Sidwell.	
1780						
	Dec.	31.	...	9	313.90	J. F. McConaughy.
			...	90	12.	Wm. Westbrough.
		21.	50	33491	10.70	C. Wolford.
		30.	...	2	26.70	O. Brown.
		9.	...	3	77.	J. A. Corcoran.
		31.	...	8	92.40	M. C. Frank.
1888, Jun-	2.	...	9	16.20	Philip Kennedy.	
	1.	51	33500	30.50	Herman Osterlok.	
			...	2	100.	A. R. Fisher.
1887, Dec.	24.	...	8	310.	J. W. Rulipson.	
1888, Jun-	3.	...	33538	10.25	Wm. Ryan.	
	6.	...	9	300.	C. E. Fosterburg.	
	11.	52	33555	187.95	S. F. Wood.	
	21.	...	80	25.	John Walkup.	
			...	1	150.90	do.
	1.	...	33591	82.	J. E. Hunt.	
	25.	...	2	339.61	Chas. Dangburg.	
	30.	...	8	20.75	Jas Neville.	
	Feb.	1.	...	9	15.50	C. S. Herser.
	Nov.	1.	60	33950	46.75	F. W. Greenwell.
1887, Mar.	7.	...	4	157.70	Mike Carry.	
	9.	...	5	175.	W. S. Laurning.	
	Oct.	27.	61	34012	357.50	S. F. Frazer.
		8.	...	3	2,463.54	Mary A. Meagher.
	Sep.	26.	...	4	101.85	Edward Gleim.
	Mar.	1.	...	15	54.50	David Hilton.
	Nov.	30.	62	34057	22.75	H. M. Jackett.
		28.	...	8	83.20	John Reck.
	Dec.	4.	...	75	47.80	Thomas Rea.
	Nov.	30.	...	6	700.	A. M. Stark et al.
	Dec.	1.	...	81	100.	W. S. Morrison.
		10.	...	7	22.70	Phillip Kennedy.
		1.	...	8	211.50	Wm. Jones.
		10.	...	9	561.20	G. W. Mayo.
1887, Dec.	13.	63	34111	559.70	M. C. Mitchell.	

.....	...	2	20.	J. A. Palmore.
.....	...	3	22.95	James Campbell.
.....	14.	4	73.	Aaron Gabriel.
.....	15.	35	53.	S. D. Joyce.
.....	24. 64	34169	54.20	Stark & Mosher.
.....	1.	181	1,000.	M. C. Frank.
.....	30.	2	3,500.	do.
1888, Jan.	5.	34199	89.90	C. H. Young.
.....	4.	34232	90.	E. D. Parsons.
.....	6.	3	105.70	James Powers.
1887, Dec.	25.	4	112.50	David Melon.
.....	65	34248	118.30	Robert Fosler.
1888, Jan.	1. 66	34283	246.80	L. S. Loomer.
.....	28. 67	34312	21.90	E. Anderson.
.....	31.	34325	5,000.	Stark & Mosher.
.....	28.	6	31.	J. H. Frew.
.....	30.	7	12.	W. Westbrough.
.....	30.	8	91.	C. Burgess.
.....	.....	9	20.	John Meredith.
.....	3.	30	118.	James Flynn.
.....	1.	8	105.20	Dustin Schadder.
Feb.	2.	9	300.	France & Harlan.
.....	15. 68	34331	100.	Sarah I. Bingham.
.....	29.	79	300.	C. E. Forsteburg.
.....	1.	367	82.	J. E. Hunt.
.....	20.	4	102.50	Miller Heller.
.....	16.	61	100.	Sarah Bingham.
.....	7.	34354	10.50	Wm. Walker.
1781	.....	.....	.....	.....
1887, Oct.	15. 75	34736	75.	C. N. Turner.
.....	Nov. 5.	7	258.15	R. H. Fair.
.....	12.	8	861.70	Wm. Nolan.
.....	Dec. 12. 76	34755	50.	H. Naber.
.....	.....	6	50.	"
1888, Jan.	2.	83	82.20	Wm. Doody.
.....	Dec. 31.	4	190.	H. Hagenhausen.
.....	Jun- 1.	95	65.50	Wm. Meredith.
.....	3. 6	.....	65.70	Chas. H. Fisher.
.....	Dec. 31. 77	34848	76.30	Henry Kistler.
1888, Jun-	10.	9	135.55	Anton Wreft.
.....	9.	34869	159.90	T. M. Galway.
.....	18. 79	904	110.20	Joseph Sinasall.
.....	28. 80	55	264.20	John Neville.
.....	.....	71	31.90	J. H. Frew.
.....	31.	2	165.	Anson M. Otis.
.....	.....	3	110.	I. Contrell.
.....	Feb. 1.	34979	100.	A. R. Fisher.
.....	6.	84	35.75	T. C. Moore.
.....	4.	5	180.	Geisler & Co.
.....	6.	6	250.	E. S. Palston.
.....	20. 81	35021	221.25	W. Blincow.

	23.	...	26	76.	Austin Tinsley.
	27.	...	35045	250.40	T. F. McConaughy.
	Mch. 3.	82	52	12.	Wm. Weitbrugh.
1887,	Oct. 28.	90	35462	2,372.50	Wm. McDaniel.
	Nov. 12.	...	69	1,192.60	J. W. Underhill.
	28.	...	82	57.75	Fred Southland.
	12.	82	86	926.10	E. Nolan.
	Dec. 27.	...	35492	58.50	H. T. Ilgenfritz.
1888,	Jan. 3.	91	35516	29.20	Sarah M. Bustard.
	26.	...	19	82.20	B. Jenkins.
	27.	...	20	174.20	O. M. Miller.
.....	...	...	35521	44.	W. S. Wright.
	30.	...	39	46.60	J. R. Corcoran.
Feb.	1.	92	97	88.	G. & B. Bowersock.
	9.	...	98	148.20	Chas. F. Fisher.
Jan.	30.	93	35605	77.	Julia A. Corcoran.
Feb.	13.	...	18	107.	W. M. Smith.
	16.	...	19	55.20	T. P. Owen.
	6.	...	27	243.80	T. H. Carrol.
	16.	...	28	51.	O. C. Lutz.
	13.	94	83	1,013.10	J. W. Nucurhill.
Mch.	10.	95	35713	37.70	Wilson Patt.
	1.	...	18	90.	E. S. Parsons.
	12.	...	37	129.90	J. W. Askew.
Feb.	15.	...	35740	1,081.	C. M. Frank.
Mch.	30.	...	46	410.	"
	29.	...	47	50.	O. P. Sloninger.
	3.	96	35750	300.	France & Harlan
Apr.	3.	...	56	256.80	L. S. Loomer.
.....	...	...	57	50.	A. R. Fisher.
	7.	...	35768	250.40	J. F. McConaughy.
	2.	...	81	4,600.	Stark & Mosher.
	10.	...	2	26.25	H. M. Dietrick.
.....	...	...	3	368.40	Martha & R. Ross.
	4.	...	88	14.75	James Armstrong.
Mch.	7.	...	89	59.	T. P. Owen.
Apr.	14.	...	96	73.50	John Peter.
	2.	97	35816	72.35	M. C. Frank.
'87,	Dec. 10.	...	36233	120.	Harmon Metz.
1887,	Dec. 6.	105	36235	142.90	W. E. Churchill.
	16.	...	37	1,338.20	H. B. Gue.
	1.	...	42	700.	M. C. Frank.
.....	...	...	43	1,000.	do.
1782					
	16.	...	44	120.	H. B. Gue.
'88,	Jan. 31.	106	36268	114.	John Middle.
'87,	Dec. 16.	...	77	435.	H. M. Woolman.
'88,	Feb. 24.	...	83	71.25	J. H. Crawford.
'87,	Oct. 27.	107	36305	127.20	Andrew Srtube.
	Mch. 1.	...	6	83.20	John Rick.
.....	...	...	7	47.80	Thomas Rea.

'88	Feb.	10.	...	27	57.90	J. Walkup.
	Mch.	6.	...	28	100.	H. C. Graves.
		1.	...	36346	100.	W. F. Morrison.
		8.	...	47	89.80	H. H. Youna.
		10.	108	52	32.90	O. C. Noes.
	Feb.	28.	...	36370	35.50	M. Gunnell.
	Mch.	17.	...	71	118.70	B. F. Willis.
		21.	...	83	219.80	Wm. Jones.
		10.	109	36412	103.40	Chas. Green.
		29.	...	18	100.	O. P. Slouzen.
		3.	...	19	1,000.	M. C. Frank.
		15.	...	25	56.15	S. D. Jaynes.
	Apr.	3.	...	36431	36.	S. M. Johnson.
	Mch.	12.	...	42	20.	James Campbell.
		26.	...	43	1,800.	Norcross & Worl.
		24.	110	52	112.50	David Melon.
		29.	...	36490	1,800.	Geo. B. France.
	Apr.	16.	...	94	12.	Philip Kennedy.
		17.	...	45	31.	G. H. Spears.
	Apr.	16.	111	36506	40.	Philip Kennedy.
1888,	May.	1.	111	36523	90.	E. D. Parsons.
		5.	...	38	17.25	B. Farmer.
		17.	112	56	29.10	G. H. Spears.
	Apr.	28.	...	57	37.75	Thos. Jones.
	May.	31.	...	36582	86.50	M. C. Frank.
	Jan.	3.	120	36969	330.	Oscar M. Miller.
		9.	...	71	330.	do.
'87,	Dec.	30.	...	79	300.	John Meradith.
'88,	Mch.	17.	...	96	58.90	W. H. Willis.
	Apr.	6.	...	37042	50.	H. Nabor.
.....			...	43	50.	"
	Apr.	7.	122	59	82.20	Wm. Doody.
	Mch.	24.	...	65	50.	M. C. Horn.
		31.	123	37102	3,500.	M. C. Frank.
	Apr.	1.	...	33	125.	H. Blodgett.
		27.	124	37155	37.70	N. Dart.
		30.	...	61	77.	Julia A. Corcoran.
	May	5.	...	70	112.28	L. H. Donaldson.
		8.	...	83	135.55	Anton Wulff.
	Jun-	1.	126	37253	143.	France & Harlan.
		28.	127	37306	22.15	O. N. Miller.
.....			...	7	102.95	T. H. Walker.
'87,	Dec.	22.	135	37713	75.	J. A. Eaton.
'88,	Feb.	11.	...	17	150.	Daniel A. Rickera.
		13.	...	18	1,450.	Ben Price.
		14.	...	19	550.	Mary A. Meagher.
.....			...	20	650.50	"
		17.	...	21	187.20	John Chaff.
		25.	...	23	192.20	Pitt Wilson.
		15.	...	24	151.25	Dan'l Heaton.
		25.	...	25	82.45	Wm. S. Leaming.
		11.	...	26	500.	Wm. A. Sharar.

'88, Apr. 18.	135	37742	323.70	O. N. Kelley.
30.	...	47	46.60	Julia A. Corcoran.
27.	136	76	118.57	S. P. Buckmaster.
May 1.	...	77	82.20	Benj. Jenkins.
15.	138	37893	1,081.	M. C. Frank.
June 1.	...	98	100.	W. F. Morison.
May 20.	...	99	1,200.	M. C. Frank.
1783				
June 6.	139	37917	32.95	O. Noyes.
12.	...	29	38.50	H. T. Ingenfritz.
15.	...	38	221.25	Wm. Blincoe.
18.	...	46	89.90	H. H. Young.
26.	140	39766	20.20	Robt. Floser.
May M4.	...	76	14.25	E. Evans.
1.	...	77	2,491.10	Wm. M. Daniels.
Jul- 18.	...	97	293.95	Chas. Vanberg.
Sep. 22.	150	38459	36.	V. C. Huleon.
.....	...	60	91.25	John H. McClatchy.
.....	...	61	53.75	John B. Clabby.
.....	...	62	43.25	P. N. Flynn.
.....	...	63	52.	J. H. Huston.
.....	...	64	140.	Sanciers.
.....	...	65	26.50	V. Heimers.
Sept. 1.	...	67	100.	J. J. Brizendine.
Dec. 16.	...	38477	40.	William.
Mch. 6.	...	99	66.45	H. C. Graves.
Feb. 22.	151	38503	222.10	Peter Kelley.
Mch. 11.	...	13	2,566.30	Marie C. Meagher.
Apr. 16.	...	17	36.	Joseph Ellis.
May 1.	...	19	218.	N. Elliott.
.....	...	23	88.	G. & B. Bowersock.
12.	...	38524	190.	S. L. & C. H. Young.
'88, May 23.	151	28543	84.	J. H. Madson.
.....	...	44	23.84	do.
June 1.	152	63	47.80	Thos. Rea.
2.	...	64	125.	A. A. Lessek.
9.	...	90	100.	A. E. Groves.
13.	153	38611	50.	S. D. Jaynes.
16.	...	27	211.30	Wm. Jones.
21.	...	49	74.50	W. Meradith.
5.	154	38650	83.20	D. Price.
22.	...	57	103.70	Andrew Strube.
26.	...	78	28.	Robt. Floser.
Jul- 23.	156	38771	28.70	A. Gilver.
31.	...	80	245.62	M. C. Frank.
2.	...	86	25.	Will Smith.
Aug. 6.	...	94	20.75	John P. Cook.
Jun- 27.	...	98	1,800.	France & Harlan.
Jan. 31.	165	39231	225.	J. J. Sidwell.
24.	...	32	75.	T. B. Bennett.

Feb. 25.	...	34	80.	Thos. S. Gleason.
Jan. 27.	...	35	50.	M. D. Chambers.
.....	...	33	36.75	L. H. Hamilton.
.....	...	37	22.50	Jos. Samsall.
Mch. 8.	...	39	15.	E. Schmidt.
Apr. 2.	...	39245	53.95	Vaviel Friesen.
1.	...	47	14.75	J. A. W. Johnson.
4.	...	48	14.75	M. J. Covers.
24.	...	49	35.	M. C. Horn.
Feb. 22.	136	39252	80.	M. Elliott.
May 10.	...	58	357.50	S. F. Frazier.
1.	...	60	129.90	J. W. Askew.
16.	...	67	215.	Oliver Baggs.
23.	...	68	58.70	Mary G. & Otto Fair.
Jun- 12.	166	39281	87.50	Geo. H. McKinyon.
13.	...	2	114.70	Wm. Westsbaugh.
27.	...	91	50.	G. Gross.
29.	...	2	50.	H. Nabor.
28.	...	3	74.20	A. Miller.
30.	157	39324	1,925.39	M. A. & I. Meagher.
Jul- 23.	168	68	1,013.10	J. W. Underhill.
Apr. 21.	139	434	100.	S. W. Sidwell.
.....	...	5	257.50	
July 2.	...	38	3,500	M. C. Frank.

1784

Jul- 2.	170	451	15.00	Will Smith.
Jun- 28.	...	2	23.	M. Wertsbaugh.
Aug. 8.	...	3	21.95	F. O. Clapp.
29.	171	39504	79.70	J. E. Hunt.
24.	...	35	300.	P. E. Haynes et al.
21.	...	36	26.75	S. F. Wood.
Sep. 20.	...	561	103.50	Andrew Strub.
Feb. 16.	180	39977	121.	Jasper Mosgrove.
"	...	8	126.	Armon Friel.
"	...	9	167.60	O. S. Heath.
"	...	80	118.20	Frank Laird.
Apr. 2.	...	39998	32.50	David Fessiann.
May 9.	181	40010	387.30	Geo. W. Mayo.
10.	...	17	120.20	I. A. Rummell.
25.	...	26	50.20	Geo. D. Elliott.
Jun- 13.	...	34	342.90	W. E. Churchill.
Feb. 2.	...	36	205.	I. W. Cullingham et al.
May 15.	...	48	1,192.	J. W. Underhill.
Jul- 31.	182	40078	2,700.	M. C. Frank.
Apr. 30.	...	99	905.	M. A. & John Heagher.
9.	183	105	28.	Alex Maxwell.
Aug. 9.	...	6	167.70	H. M. Heaton.
Aug. 21.	185	40209	1,231.	M. C. Frank.
15.	...	16	1,104.45	"

	24.	...	27	125.	P. E. Haines.	
	25.	...	28	120.50	T. H. Carrol.	
	1.	...	40232	58.50	H. G. Ilgenfritz.	
Sep.	21.	186	81	37.70	W. Dart.	
	22.	...	85	192.45	I. H. Walker.	
	29.	...	40292	677.37	M. C. Frank.	
'86, Dec.	27.	195	701	500.	M. Luckey.	
'87, Oct.	27.	...	17	50.	Ezra A. Edwards.	
'88, Mar.	9.	...	25	150.	Stephen Evans.	
June	2.	196	40759	208.	S. A. Leselk.	
May	1.	...	61	750.	Christian Losen.	
Jun-	13.	...	63	2,031.20	Adam Trickey.	
	12.	...	67	87.50	Geo. H. Kinyon.	
	19.	...	40770	435.	H. M. Woolman.	
Jul-	2.	...	95	124.20	A. F. Brown.	
Aug.	29.	197	40816	47.80	Thos. Rea.	
Sept.	3.	198	40851	98.	Stark & Mosher.	
	1.	...	57	211.30	Wm. Jones.	
	1.	...	61	222.25	Peter Kelley.	
	11.	...	73	50.	S. D. James.	
	1.	...	96	166.45	H. C. Graves.	
	24.	199	40944	196.55	John Chadd.	
	15.	...	49	44.	Thos. Jones.	
Oct.	1.	200	40972	87.25	Thos. S. Gleesen.	
Sept.	24.	...	3	53.10	O. N. & I. F. Kelley.	
	29.	...	4	14.	Chas. Hatteh.	
	25.	201	41018	1,800.	Geo. B. France et al.	
Oct.	31.	...	44	300.	S. F. Frazier.	
Nov.	27.	203	41114	200.	Lewis E. Fees.	
Feb.	1.	210	41469	120.20	Chas. Petterson.	
	25.	...	76	80.	Thos. S. Gleesen.	
'87, Oct.	27.	211	41522	100.	E. A. Edwards.	
'88, Apr.	1.	...	3	14.75	A. Westergren.	
Mar.	17.	...	4	80.	C. W. Churchill.	
Apr.	20.	...	48	10.	R. L. Martin.	
May	9.	213	41601	330.30	Geo. W. Mayo.	
	12.	...	6	205.	S. L. & C. H. Young.	
	1.	...	32	653.52	Edward Gleim.	
Jun-	28.	...	43	346.50	Oscar M. Miller.	
	"	...	44	346.50	"	
	9.	214	41683	41.20	Edward Gleim.	
1785						
	Aug.	31.	215	706	60.	Chas. Green.
		24.	...	12	125.	A. E. Haynes.
	Oct.	1.	...	42	27.75	John B. Clabby.
		1.	217	41808	79.70	O. E. Hunt.
		18.	...	21	112.88	F. A. Donelson.
		20.	...	2	100.	France & Harlan.
		3.	218	41864	3,572.35	M. C. Frank.
		1.	...	96	35.70	Mary I. & Geo. Thair.
Nov.	27.	220	41952	50.50	Lewis E. Fees.	

Dec.	7.	...	88	225.	T. P. Owen.
Oct.	17.	...	89	1,013.10	J. W. Underhill.
Dec.	1.	...	90	34.10	G. H. Speer.
	22.	221	42017	166.25	H. C. Graves.
	20.	...	18	31.	G. H. Spears.
	1.	...	24	124.20	Peter Kelley.
'89, Jan.	2.	...	34	79.30	W. Meredith.
Jan.	4.	...	36	60.	E. D. Parsons.
	12.	...	44	30.	Robt. Flesser.
'88, Feb.	23.	230	42451	400.	E. M. Freeman.
	22.	...	2	80.	Martin Elliott.
Mar.	28.	...	55	133.75	Geo. Newton.
	28.	...	56	133.75	E. W. "
Nov.	1.	...	95	537.50	Wm. McDaniel.
Aug.	1.	...	6	2,554.67	Wm. M. McDaniel.
	14.	...	7	577.50	Mary & John Meagher.
	14.	...	8	683.	do.
Nov.	1.	232	42595	2,755.80	M. C. Frank.
	20.	...	63	1,232.80	do.
	16.	...	70	1,113.04	do.
	1.	...	96	205.45	J. H. Walker.
Dec.	3.	233	42625	93.75	Thos. S. Gleesen.
	1.	...	44	222.25	P. Kelley.
	25.	234	42663	130.	S. W. Sidwell.
	26.	...	67	381.95	do.
	22.	...	74	130.	S. P. Buckmaster.
	29.	...	75	131.85	C. E. Fosterburg.
'89, Jan.	1.	...	82	2,110.20	Adam Frickey.
'88, Dec.	31.	...	84	211.30	Wm. Jones.
Jan.	1.	...	91	80.	James Gagley.
'89, Jan.	9.	...	99	79.25	C. H. Young.
'88, Feb.	4.	245	43208	105.90	D. J. Bennett.
Sept.	3.	...	23	219.62	P. Owens.
Sep.	11.	...	44	2,694.60	M. & J. Meagher.
Nov.	27.	246	43254	100.	Lewis E. Fees.
Dec.	10.	247	314	114.75	P. & N. Heaton.
	17.	...	37	153.20	M. & J. Meagher.
	24.	248	43336	1,800.	Geo. B. France et al.
	17.	...	57	23.	Milton Wertsbaugh.
	14.	...	58	25.95	F. O. Clapp.
	10.	248	43365	50.	S. D. Jones.
	29.	...	74	265.44	W. Blincen.
	29.	...	5	117.75	Wm. Nolan.
	29.	...	6	128.25	H. & F. Bledodt.
	"	...	7	19.	R. B. Price.
	26.	...	8	53.75	David & B. Price.
	27.	249	42400	60.	Wm. Aldrich.
'90, Jan.	1.	...	8	410.40	S. L. & C. H. Young.
	8.	...	9	42.50	L. M. & John Gunnell.
	"	...	10	299.45	John Gunnell.
	1.	...	17	51.	Louis Fees.

	25.	250	42462	23.50	James Campbell.
Feb.	1.	...	480	25.	M. Mitchell.
	1.	...	96	103.70	Dorn & Raymon.
	19.	251	43532	100.	E. Wendelt.
'88, Oct.	1.	260	972	1,975.19	M. & J. Meagher.
1786					
Dec.	26.	...	89	1,225.15	H. B. Gue.
	28.	...	95	120.52	Geo. Heaton.
	31.	261	44013	331.40	G. W. Mays.
'89, Jan.	3.	...	35	126.10	D. P. Hunter.
	11.	262	50	526.10	Wm. M. Daniel.
	12.	...	64	105.	N. A. Dean.
'88, Dec.	31.	...	69	58.50	H. G. Ilginfritz.
'89, Jan.	12.	...	70	63.50	W. H. Reader.
	"	...	71	65.40	Wm. Workbaugh.
	15.	263	44148	166.45	H. C. Graves.
'88, May	16.	275	703	210.	Oliver Baggs.
Nov.	14.	...	17	951.	M. & J. Meagher.
	15.	...	28	1,252.23	J. W. Underhill.
'89, Feb.	1.	278	44853	219.	Wm. Jones.
	18.	280	962	196.15	Mathilda C. Hice.
'88, May	9.	...	81	50.	J. A. Adams et al.
'89, Mar.	19.	281	45021	53.75	David & Benj. Price.
Feb.	2.	...	2	551.39	Wm. McDaniels.
Apr.	15.	...	3	31.	Geo. W. Harvey.
	17.	...	4	19.95	A. C. Moore.
	23.	...	25	26.	Robt. Fleaser.
	25.	...	31	31.	G. H. Spears.
'88, Dec.	11.	290	45457	182.45	Geo. W. Kenyon.
	27.	...	62	173.	Geo. W. Bowen.
	26.	...	63	102.10	H. B. Gue.
'89, Dec.	25.	...	68	112.50	David Meley.
Jun-	14.	...	69	500.	do.
Feb.	15.	291	45500	67.15	Wm. H. & J. Willes.
	27.	...	18	62.12	J. B. Frickey.
Mar.	9.	292	61	50.	S. T. James.
Apr.	17.	294	45670	25.95	F. O. Clapp.
	9.	...	1	38.	E. H. Underhill.
	15.	...	2	628.20	Gilmore Bros.
May	8.	295	45701	69.25	F. Baldwin.
'88, Feb.	23.	305	46229	400.	E. M. Freeman.
	23.	...	30	370.	do.
Jun-	29.	...	36	450.	John F. McConaughy.
Feb.	13.	...	39	35.	Mary Chadd & J. Chadd.
Apr.	23.	...	40	80.	Nathaniel Dean.
Sept.	3.	...	45	300.	Marv & Leroy Neville.
	19.	...	46	350.	Peter Bohm.
July	1.	306	46252	1,100.	S. H. Sedwicke.

Aug. 24.	...	64	300.	P. E. Haines.
Sept. 28.	...	72	52.50	I. A. Stubbs.
Nov. 27.	...	79	200.	Louis E. Lees.
Dec. 5.	...	80	237.70	Henry Metz.
17.	...	83	129.	John I. Davis.
17.	...	84	104.	John & Aug. Dick.
'88, Dec. 13.	303	46293	575.20	C. Lorenz.
26.	...	94	200.	Louis Fees.
'89, Jun- 1.	...	97	80.	James I. Geagle.
12.	307	46301	166.20	Robt. Sloser.
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Total.....			159,465.12	

1787

EXHIBIT "13A."

Stark & Mosher Notes, as Shown by Discount Register No. 3.

Date.	Page.	No.	Amt.	Name of maker.
1889, Jan. 12.	30	57015	24.25	W. A. Dean.
14.	...	16	754.	David Melev.
Feb. 12.	...	32	264.	H. Ford & M. Meeker
Apr. 22.	32	142	105.	W. A. Dean.
"	33	57161	539.25	Wm. McDaniel.
Jun- 14.	...	2	716.10	do.
18.	...	3	1,038.45	J. W. Underhill.
Apr. 15.	34	210	173.45	H. C. Graves.
Feb. 8.	40	58013	324.25	J. H. Campbell.
18.	...	17	362.	Matilda C. Hice.
5.	...	28	2,684.53	Wm. McDaniel.
17.	...	29	717.70	Mary A. & J. Meagher.
17.	...	30	606.81	do.
Jun- 29.	44	58226	230.50	David Melev.
Jul- 13.	45	71	14.	F. J. Ferguson.
Jun- 17.	50	59021	185.	Elizabeth Clabby.
Feb. 19.	...	29	115.	N. Wendell.
'88, Sep. 17.	...	37	280.	O. R. Jones et al.
Aug. 30.	...	38	200.	J. W. Fasstes et al.
'89, Mar. 14.	...	43	2,831.57	Marv & John Meagher
June 7.	52	59140	50.	S. W. James.
Jul- 18.	55	259	35.20	Wm. Miller.
Sept. 7.	56	321	51.20	Eben Perry.
Mar. 12.	60	60034	112.65	Louis E. Feace.
'87, Oct. 6.	...	36	100.	C. H. Morse et al.
'9, Jul- 15.	63	180	12.	H. B. Gue.
'88, Nov. 5.	...	91	300.	Mary J. Lloyd et al.
'89, Aug. 1.	64	231	106.	Thos. Jones.
Apr. 26.	...	2	150.	J. G. Cording & T. Scott.
July 8.	65	53	117.20	W. H. Greer.
Sep. 18.	66	60318	9.75	J. J. O'Brien.

'88,	Nov.	10.	70	61033	110.	S. P. Huffman.
	May	9.	...	37	382.30	Geo. W. Mays.
'89,	Apr.	15.	...	39	13.75	N. J. Keys et al.
	Mar.	27.	...	40	13.75	G. D. Keys.
	May	15.	71	61055	1,251.23	J. W. Underhill.
	Aug.	2.	72	115	38.50	H. G. Inselfritz.
		13.	...	23	15.	T. W. Mayo.
		23.	74	61204	37.	S. G. Wood.
	Sep.	2.	...	18	22.20	L. C. Nolan.
		23.	75	50	40.	D. V. Twichell.
	Mar.	11.	80	62019	242.75	E. W. Newton.
		12.	...	20	134.95	E. I. Bennett.
	Dec.	29.	...	21	100.	J. W. Franklin.
	Mar.	23.	...	23	23.50	O. W. Williams.
	Aug.	17.	81	62033	28.50	Chas. Dolovan.
	Sep.	5.	82	124	50.	S. D. James.
	Oct.	8.	84	62247	117.20	W. H. Greer.
		23.	...	48	52.	W. F. Freeman.
	Nov.	9.	86	300	110.	J. J. Smetzer et al.
		11.	...	1	40.	Chas. Green et al.
		9.	...	2	104.	Thos. Jonas.
	Feb.	2.	90	71034	500.	Albert Harlan.
	Mar.	1.	...	39	87.50	Emil Meagher.
		21.	...	40	271.	W. Elliott.
	Jul-	19.	91	71	35.70	Henry Metz.
	Aug.	19.	...	72	101.55	Wm. Wetzburgh.
1788						
	Aug.	23.	...	73	35.	Dick Howard et al.
		29.	...	76	213.62	Oscar M. Miller.
	Sep.	7.	...	77	131.20	S. M. Kline.
		10.	...	78	116.20	Chas. & G. Bowersock
		9.	...	79	198.	G. W. Bowers.
'89,	Sent.	1.	91	71083	373.20	J. H. Campbell.
	Jul-	8.	92	130	58.20	P. A. Heover.
	Apr.	19.	...	2	70.	Geo. Gleim.
	Oct.	27.	94	71207	280.50	A. S. & W. Harland et al.
		12.	...	8	12.	Anton Bechtel.
		16.	...	9	70.	John Faul.
	Sep.	25.	...	10	11.	H. H. & E. B. Hunt.
	Oct.	13.	...	1	11.70	J. A. Johnson.
		12.	...	2	60.	J. E. Lonsdale.
		18.	...	3	23.30	Gilmore Bros.
		18.	...	4	20.	J. B. Clubby.
	Sep.	20.	...	15	12.80	J. A. Anderson et al.
	Nov.	9.	96	71304	15.	M. R. Simpson.
	Oct.	19.	...	12	25.	W. A. Muchmore.
	Dec.	16.	97	63	21.	W. Patten.
		27.	98	71425	40.	W. A. Dean.
	Jun-	1.	100	72001	80.	J. K. Geacley.
	July	29.	...	2	115.20	J. J. Smeltzer.

	Sep.	24.	...	13	131.87	J. B. Clabby.
	Oct.	3.	20	.....	8.45	S. H. Hull.
	Aug.	19.	102	72113	50.	E. & P. W. Dale.
	Dec.	24.	103	197	130.	H. C. Graves.
	Nov.	21.	...	98	40.	J. W. Barnes.
'90,	Jun-	6.	104	72228	4.75	F. A. Baker.
		13.	105	53	21.75	T. G. Simpson.
		12.	...	63	61.50	James E. Lonsdale.
'89,	Sept.	4.	110	73012	20.	N. A. Dean.
		12.	...	16	526.	W. N. Smith.
		19.	...	27	115.	E. Wendelt.
	Nov.	9.	...	39	100.	Thos. Jones.
	Dec.	14.	112	73103	43.20	J. W. Donovan.
		4.	113	153	50.	S. D. Jones.
		20.	...	4	50.	W. R. Turman.
		30.	114	73221	43.20	R. B. Simpson.
	"		...	2	50.	S. F. Wood.
		31.	...	3	329.	M. C. Hice et al.
'90,	Jun-	3.	...	4	60.30	W. F. Tilden.
		20.	...	5	40.	H. & F. Bledott.
'89,	Oct.	29.	115	73262	157.50	J. G. Cording.
'90,	Jan.	30.	...	3	113.20	Eben Perry.
		25.	...	4	21.	W. Pattoo.
	Feb.	15.	116	73306	283.50	J. A. Campbell.
	Apr.	13.	120	74004	100.	Fred & F. Bittinger et al.
		22.	...	5	22.	J. A. Woodruff et al.
'89,	Oct.	21.	...	74047	1,821.15	Wm. McDaniel.
		21.	...	8	703.78	do.
	"		...	9	2,178.85	do.
		28.	121	55	400.	Marv & John Meagher
	Nov.	19.	...	74060	100.	W. H. Reader.
'89,	Dec.	30.	123	182	700.	Richard I. Thesing.
'90,	Jun-	4.	...	3	24.70	M. L. Grant et al.
		15.	...	4	25.95	F. O. Clapp.
		13.	...	5	11.75	T. H. O'Brien.
		7.	...	6	140.20	Robt. Fleeser.
	"		...	7	133.95	R. D. Owen.
		22.	...	74189	142.12	Geo. Heaton.
		25.	125	259	75.20	C. M. Read.
		27.	...	60	117.20	W. H. Geer.
		29.	...	1	1,000.	E. Nixon.
	Feb.	1.	...	2	34.95	E. H. Underhill.
	"		...	3	40.	Chas. Bear.
1789						
	Mar.	3.	126	74341	153.20	J. H. Frew.
	Feb.	22.	...	2	11.	H. H. & E. Hunt.
		26	...	3	63.	A. J. Neuman.
	Mar.	15.	127	74366	288.50	J. A. Campbell.
'89,	Jan.	2.	130	75002	233.46	Haneick & Conover.
		2.	...	3	346.06	do.

'90, Jun-	20.	...	44	54.90	E. W. Spears.
	23	131	94	290.15	L. E. Fees.
	25.	...	95	82.40	Wm. Wertsbaugh.
	"	96	93	28.	Godfrey Carlen et al.
	29.	...	97	27.80	David Price.
	Feb. 4.	...	98	110.55	Wm. Wertsbaugh.
'89, Dec.	5.	134	75213	50.	Rice Bryce et al.
'90, Mar.	1.	...	17	19.	Thos. Ball.
	Jun- 29.	...	18	171.85	C. E. Farsteburge.
	Feb. 28.	...	19	231.	J. A. Neuman.
	Mar. 8.	...	20	100.	R. Fisher & E. Westerfelt.
	18.	...	21	400.	J. M. Barns.
'89, June	1.	140	76003	518.75	David Maley.
	Oct. 28.	...	6	4,811.77	Mary & John Meagher.
	Dec. 14.	...	16	47.50	Will Smith.
	Oct. 21.	...	33	200.	Wm. McDaniel.
	Dec. 10.	...	37	120.	Chas. M. Donovan.
	28.	...	41	33.63	Thos. Jones.
'90, Mar.	3.	142	76141	50.	S. D. Jones.
	Mar. 20.	144	203	50.	W. B. Turman.
	25.	...	4	40.	Thos. Jones.
	Apr. 9.	...	25	33.38	Wm. McLaughan.
	12.	...	26	10.	Wilson Richter.
	21.	145	77251	53.	S. F. Wood.
	Mar. 20.	...	93	124.	Richard Thesing.
'89, Jul-	29.	150	77001	100.	W. M. Cowall.
	14.	...	2	791.70	David Meley.
	Nov. 9.	...	3	139.	Thos. Jones.
	28.	...	4	27.	Fred Schfenberg.
	"	...	5	128.50	Jacob Mack.
	"	...	6	16.50	Oliver Pierson.
	20.	150	77007	26.80	G. Walt.
	"	...	8	34.80	G. & W. J. Miller.
'90, Feb.	1.	...	26	105.40	C. Peterson.
	Jun- 18.	...	30	1,142.30	J. W. Underhill.
	1.	...	32	75.	G. W. Bowers.
	Mar. 1.	...	41	19.	Thos. Bell.
	Apr. 4.	152	77132	83.	J. W. Stuart.
	7.	...	3	133.95	R. D. Owen.
	19.	153	93	55.	Robt. Shulz.
'89, Aug.	17.	180	78007	765.68	Mary & John Meagher.
'90, Mar.	1.	...	22	21.	Thos. Bell.
	Feb. 21.	...	23	75.	S. F. Frazier et al.
	26.	...	24	62.	E. J. Newnan.
	Apr. 1.	...	32	160.	C. C. Epp.
	May 31.	163	78174	50.	S. D. Jones.
	June 2.	...	79	124.94	M. C. Delamaeter.
	May 16.	164	78244	34.70	I. E. Bennett.
	17.	...	45	259.50	J. H. Campbell.
	Jul- 18.	...	46	10.75	Thos. Gue.

'89, Aug. 26.	170	79060	303.	Robt. E. Meagher.
Sep. 14.	...	1	162.52	R. S. & M. Kelley.
18.	...	2	34.	Elisha & Emma Vandeventer.
"	...	3	180.	C. H. Fisher.
"	...	4	43.50	W. Hathaway.
.....	...	5	31.20	J. H. McClatchey.
.....	...	6	61.20	H. A. Loring.
24.	...	7	90.39	John B. Clabby.
'90, Jan. 27.	...	29	82.70	S. F. Wood.
1790				
Feb. 28.	...	34	62.20	J. W. Donovan.
Mar. 1.	...	35	21.	Thos. Bell.
8.	...	36	50.	Chas. Putman.
'90, Mar. 19.	171	79050	10.40	Bacon M. Dyer.
1.	...	51	88.	J. G. Cording.
Apr. 15.	...	53	32.50	Ned Patten.
12.	...	54	21.	Wm. Richter.
May 1.	...	58	65.	L. J. Smith.
"	...	59	5,322.74	M. C. Frank.
Mar. 10.	175	77262	27.75	R. Fleming.
Apr. 23.	...	3	9.	C. B. Wilson.
May 17.	...	4	20.	H. H. Hunt.
29.	...	65	28.20	Chas. M. Donovan.
June 25.	...	6	16.75	E. H. Underhill.
13.	...	7	12.50	D. E. Kibby.
18.	...	8	50.	W. R. Turman.
21.	...	9	109.	Thos. Jones.
10.	...	77282	400.	J. W. Barns.
'89, Oct. 16.	180	80005	50.	Johann Faul.
19.	...	6	60.	Wm. M. Mochmoore.
Nov. 14.	...	25	22.50	Joe Williams.
'90, Jan. 6.	...	27	12.50	C. O. Brown et al.
"	...	28	22.50	Oscar Faulman.
"	...	29	22.50	H. C. Noll.
"	...	30	16.25	R. Schonesk.
"	...	31	5.25	T. J. Ferguson.
"	...	32	17.	D. Scudder.
.....	...	33	10.	James Bauer.
.....	...	34	69.	Phillip Bohl.
27.	...	41	20.	G. W. Ong et al.
Feb. 1.	...	42	100.	James K. Geagley.
'89, Dec. 11.	...	43	200.	Jno. Cockle.
'90, Mar. 4.	181	80056	25.	Wm. Taylor.
1.	...	57	170.	M. T. Pensington.
'90, Apr. 2.	181	80068	35.25	Chas. Green.
7.	...	73	29.60	Eli Nixon.
19.	...	79	118.20	Z. Walker.
23.	...	82	18.	Oscar H. Parker.
29.	...	83	24.75	N. F. Tilden.

	23.	...	84	12.	Chas. W. Putman.	
	15.	...	80083	55.	Frank L. Buell.	
	26.	...	86	41.62	Wm. McDaniel.	
	24.	...	87	2,237.43	do.	
	24.	...	88	1,895.20	do.	
	9.	...	89	75.27	O. M. Miller.	
May	23.	...	93	175.15	John & Mary Meagher.	
Feb.	1.	184	80216	13.	James K. Geagly.	
May	14.	...	17	110.70	J. J. Smeltzer.	
	26.	...	18	168.70	Jno. B. Clabby.	
	24.	...	19	23.36	Elmira E. Dale.	
Jul-	13.	...	20	22.50	Thos. Jones.	
'89, Oct.	15.	190	81002	50.	M. C. Horn.	
'90, Mar.	17.	...	45	50.	R. Thesing.	
	11.	...	46	12.	C. D. Keyes.	
	15.	...	47	65.15	D. E. Kirby.	
Apr.	7.	191	81050	37.50	C. Custer.	
	22.	...	1	600.	Chas. Green.	
	22.	...	2	600.	do.	
	23.	...	3	294.80	G. R. Meredith.	
May	13.	...	90	125.	J. J. Smeltzer.	
Aug.	16.	194	81247	105.	H. Blodgett.	
Sept.	16.	...	8	32.70	O. J. Simmons.	
Jun-	20.	200	82033	80.	James K. Geagley.	
'89, Dec.	13.	...	34	525.20	C. Lorenz.	
'90, Mar.	8.	...	47	90.	Chas. W. Putman.	
'89, Dec.	21.	...	48	100.	Nettie Curwood et al.	
1791						
	Dec.	26.	...	49	225.	Irvin Culver et al.
'90, Apr.	14.	201	82055	11.25	M. J. Keyes.	
	12.	...	56	23.	Wm. Richter.	
Jun-	7.	...	67	974.50	David Meley.	
Sept.	17.	203	82192	102.50	G. W. Bowers.	
	4.	205	254	100.	A. N. Ray.	
	16.	...	55	50.	W. B. Furman.	
Oct.	11.	206	82328	150.	John E. Simpson.	
	29.	...	29	50.	Thos. Jones.	
	16.	211	91061	70.	Johan Faul.	
'89, Dec.	11.	...	64	200.	John Cockel.	
'90, Apr.	15.	...	86	32.50	Ned Patton.	
May	9.	...	96	313.18	C. N. Miller.	
Sept.	27.	213	91178	50.	Thos. Jones.	
	25.	...	9	26.70	S. K. Bouslough.	
Aug.	2.	...	80	35.20	Theo. Bell.	
Oct.	4.	216	91348	10.	Owen Dyer.	
Feb.	1.	217	94	65.34	John P. Kline.	
'89, Oct.	15.	220	92011	110.20	W. C. Horn.	
'90, Jan.	20.	...	13	80.	James K. Geagley.	
	4.	...	14	100.	W. D. Stiles.	
Feb.	1.	...	15	100.	Ed Morris.	
	1.	...	16	100.20	James K. Geagley.	

	Mar.	29.	223	92185	182.50	D. & T. Price.
	Nov.	15.	224	92225	185.	W. H. Martin.
		13.	...	6	105.	H. & L. Blodgett.
	Dec.	16.	...	7	100.	E. Eckles.
	Mar.	25.	230	93012	160.	J. S. Pruett et al.
	Apr.	12.	...	3	21.	Wm. Richter.
	Oct.	25.	...	49	77.	L. J. Smith.
	Nov.	28.	234	95209	33.50	Will Smith.
		29.	...	10	254.70	John Clabby.
	Dec.	11.	...	11	50.	W. R. Furman.
'90,	Dec.	31.	234	93215	65.40	N. A. Dean.
			...	16	135.65	John Faul.
'91,	Jun-	17.	...	23	2,163.28	N. W. Frank.
		17.	...	28	37.	S. F. Wood.
		17.	...	48	25.	M. C. Frank.
	Feb.	14.	235	93266	380.	Alice Rogers.
	Sep.	27.	240	94001	100.	Thos. Jones.
	Aug.	18.	...	2	112.	David George.
	Oct.	25.	...	24	29.25	Wm. Taylor.
'90,	Dec.	13.	242	94117	150.	J. D. Simpson.
'91,	Jun-	17.	...	35	159.40	R. D. Owen.
		17.	...	36	144.95	J. Ctorall et al.
'90,	Nov.	22.	251	95053	95.	S. F. Wood.
		1.	...	54	16.95	D. E. Kibby.
		15.	...	55	500.	Anna & Chas. Ben- nard.
'91,	Jun-	20.	...	56	53.50	J. N. Doak.
		1.	...	57	14.50	W. H. Short.
	Feb.	18.	253	95162	54.20	N. Dorset.
	Mar.	19.	255	283	25.75	Peter Bohn.
	Sep.	4.	260	96001	120.20	A. M. Ray.
'89,	Dec.	10.	...	14	120.	Chas. M. Donovan.
'90,	Nov.	26.	...	15	126.30	Robt. Fluor.
	Dec.	18.	...	33	135.	Thos. Jonas.
		1.	...	96034	1,400.	J. W. Underhill.
		12.	...	35	17.25	James E. Lonsdale.
	Nov.	28.	...	36	500.	Will Smith.
	Dec.	1.	...	37	600.	J. W. Underhill.
	Oct.	29.	...	38	78.	Carl Irnig.
'91,	Mar.	15.	264	96224	50.	W. R. Furman.
	Apr.	6.	...	30	80.	Julia E. & Jno. Dunn
		22.	...	31	37.45	Chas. Green.
1792						
'90,	Sep.	27.	270	97000	150.	Thos. Jones.
	Jul-	22.	...	11	34.80	W. J. Miller.
'91,	Jun-	16.	...	13	33.40	W. Meredith.
	Feb.	21.	...	19	104.	G. W. Bowers.
'89,	July	22.	280	98001	200.	Cora Polase.
'90,	Dec.	31.	...	5	35.50	N. Patton.
'91,	Jun-	14.	...	6	51.67	Alex. Anderson.

	Feb.	13.	...	15	17.	W. S. Bartch.
	Mar.	14.	...	22	135.20	Levi H. Hamilton.
	Feb.	21.	...	23	6.12	F. J. Fergeson.
		19.	...	98035	41.25	Wm. McDaniel.
	May	18.	282	139	54.20	D. Dorset.
	Sept.	5.	290	99004	651.20	Martha Ross et al.
	Nov.	12.	...	7	180.	C. H. Fisher.
		23.	...	9	75.	Robt. Flour.
	Mar.	26.	...	36	50.	C. & W. McDaniel.
	Apr.	21.	300	100018	600.	J. W. Underhill.
	Sep.	27.	...	19	56.	Theo. Jones.
'90,	Oct.	9.	...	24	3,000.	John A. Burk.
	Dec.	13.	...	30	110.	M. K. Bennington.
		18.	...	32	128.	L. S. Leash.
		20.	...	33	150.	Martha & Albert Ross
		29.	...	42	31.10	J. M. W. Comforth.
	Feb.	4.	301	.....	27.57	Joe Williams et al.
		7.	...	.....	58.70	J. D. Trickey.
	Oct.	1.	302	100104	181.40	Mary A. & John Meagher.
'91,	Apr.	20.	...	105	67.	Jacob Welch & Chas. H. Wray.
'86,	Oct.	15.	315	46416	110.20	M. C. Horn.
'90,	Jun-	20.	316	465	80.	James K. Gagley.
		4.	...	66	100.	Wm. D. Styles.
	Feb.	1.	...	72	100.	Edward Morris et al.
	"	...	...	73	100.20	James K. Gagley.
	Jan.	1.	...	74	1,300.	Van Wyl et al.
'90,	Mar.	1.	316	46481	400.	M. T. Pennington.
	"	...	...	2	250.	do.
	"	...	...	3	350.	do.
	"	...	...	4	500.	do.
		25.	...	46490	160.	J. S. Prewitt.
		22.	...	1	350.	Edward Gleim.
	"	...	...	2	350.	do.
	Apr.	7.	...	46494	200.	Eli Nixon.
	"	...	...	5	200.	do.
	"	...	...	6	110.	do.
	"	...	...	7	140.	do.
	"	...	...	8	250.	do.
	"	...	...	9	310.	do.
		12.	317	46500	21.	Wm. Richter.
		7.	...	1	37.50	C. Custer.
		21.	...	2	600.	J. W. Underhill.
		21.	...	3	600.	do.
July	2.	...	...	27	200.	Cora Robase.
	10.	...	...	28	610.07	W. Elliott.
"	...	...	...	29	610.07	do.
"	...	...	...	30	610.07	do.
"	...	...	...	31	610.07	do.
"	...	...	...	32	1,220.72	do.

Sept.	5.	...	46542	651.20	Mathew Ross et al.	
	27.	...	45	53.	Thos. Jones.	
	27.	...	46	1,400.	do.	
Oct.	29.	318	46559	115.90	C. F. & Minnie Leslie	
Oct.	30.	...	60	500.	Thos. Jones.	
Nov.	1.	...	61	294.80	G. A. Meredith.	
	15.	...	84	500.	A. & Chas. F. Ben- nard.	
"		...	85	500.	do.	
"		...	86	500.	do.	
"		...	87	671.55	do.	
1793						
'90,	Nov.	26.	318	46588	105.20	Robt. Flourer.
	Dec.	13.	...	9	525.20	Christina Lorenz.
	Nov.	15.	...	90	101.80	Chas. Donovan.
'91,	Jan.	1.	...	91	75.	Chas. W. Pittman.
		2.	...	92	36.30	S. L. Bushline.
'90,	Dec.	24.	...	93	933.	W. H. Barstow.
		31.	...	94	54.45	John Cockle.
'91,	June	3.	...	46595	14.60	do.
	Sept.	10.	...	96	600.	J. J. Richards.
	"		...	97	600.	do.
	Jan.	14.	...	98	106.63	Alex. Anderson.
'90,	Dec.	26.	...	99	150.	J. & J. Culver.
'91,	Jan.	20.	319	46301	22.	G. D. Buckmartin.
'90,	Dec.	24.	...	3	934.	W. H. Barstow.
	"		...	4	933.	do.
		17.	...	5	300.	Lizzie K. & M. C. Frank.
		15.	...	6	39.75	S. H. Summers.
	Oct.	6.	...	7	8.	Gagnar.
	Aug.	24.	...	8	40.	Ephraim Bowles.
	Dec.	15.	...	9	39.32	S. H. Summers.
		19.	...	46610	41.32	S. S. Ball.
'91,	Mar.	14.	...	37	163.50	D. I. Hunter.
		1.	...	42	100.	John W. Rider & Leash.
	"		...	43	100.	do.
	"		...	44	100.	do.
Total.....				98,743.22		

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EXHIBIT "14-A."

Stark & Mosher Notes, as Shown by Discount Register No. 4.

Date.	Page.	No.	Amt.	Name of maker.
'91, Jun- 29.	29	100,308	32.25	L. P. Weeks et al.
'90, Oct. 29.	30	101,044	115.90	C. F. & Minnie Leslie
Nov. 1.	...	45	294.80	G. R. Meredith.
26.	40	102,031	105.20	Robt. Flourer.

	Dec. 13.	...	2	525.20	Christian.
	26.	...	3	150.	Jennie & Jasper Culver
'91,	Sep. 12.	4	102,140	43.80	C. L. Fuller.
	Mar. 21.	50	111,000	50.	David Maloy.
	Apr. 4.	...	16	215.57	J.R.C. & W. Meredith.
'90,	Mar. 20.	...	33	350.	Edward Gleim.
'91,	Jan. 1.	...	47	75.	Chas. W. Putman.
	2.	...	48	33.30	S. L. Bushline.
	Dec. 24.	...	49	933.	W. H. Barstow.
	Oct. 6.	52	111,111	285.80	Joe Faul.
	Sep. 30.	...	2	50.	W. F. Furman.
	Aug. 12.	306	1025	26.25	E. H. Merrill.
	Sep. 4.	...	26	77.	J. W. Rider.
	Aug. 13.	...	27	185.	W. H. Martin.
	Jul. 16.	...	28	34.90	W. Meredith.
	Aug. 5.	...	29	76.20	J. F. Dunn.
	Sep. 13.	...	30	107.	Henry C. Fiedler et al.
	Aug. 22.	...	31	135.58	F. D. Frank.
	Sep. 14.	...	32	50.70	Jno. W. Rider.
	Aug. 14.	...	33	146.47	James Powers.
	Oct. 14.	...	34	250.	Wm. & Theo. McDaniel.
	"	...	35	150.	do.
	19.	...	1040	208.	Z. Kelley.
	Mar. 4.	...	1	250.	W. H. Brook.
'90,	Jul. 10.	...	2	610.07	N. Elliott.
	20.	...	3	34.80	W. J. Miller.
'91,	Jun. 1.	...	4	3,856.53	M. C. Frank.
	27.	...	5	60.	Chas. Green & Biggs.
	Mar. 1.	...	6	34.35	Will Smith.
'91,	Apr. 22.	306	1047	73.32	H. Harding.
'89,	Jul. 22.	...	8	200.	Cora Robure.
'91,	Jan. 14.	...	9	51.67	Alex. Anderson.
	Feb. 13.	307	1050	17.	W. S. Burch.
	19.	...	1	2,125.40	Wm. McDaniel.
	Mar. 5.	...	2	83.10	Peter Bohm.
	14.	...	3	135.20	Levi H. Hamilton.
	Feb. 21.	...	4	6.12	F. J. Furgeson.
	19.	...	55	2,000.	Wm. McDaniel.
	"	...	6	41.25	do.
	Apr. 10.	...	7	28.	Herbert J. Fountain.
	May 9.	...	8	105.	A. & F. Blodgett.
	Mar. 20.	...	9	90.	C. A. & J. B. Clabby.
'90,	Oct. 30.	...	60	500.	Thos. Jones.
'91,	Apr. 9.	...	1	1,000.	W. H. Barstow.
	Oct. 20.	...	2	2,000.	M. C. Frank.
	Apr. 1.	...	3	231.27	do.
	Oct. 1.	...	4	5,948.44	do.
	Nov. 10.	...	65	571.50	N. A. Dean et al.
	11.	...	6	105.20	David Wildman.
'86,	Sep. 22.	...	7	500.	Levi Dean.

'90,	5.	...	8	651.20	Martha Ross.
Nov.	12.	...	9	180.	C. H. Fisher.
	26.	...	70	75.	Robt. Flowers.
1795					
	Jun- 13.	...	1	100.	S. F. Wagner.
'91,	Mar. 23.	...	2	50.	C. & W. McDaniel.
	25.	...	3	60.	L. Vund Gumly.
	Apr. 23.	...	4	481.41	R. E. Meagher.
	25.	...	75	52.	N. Wendall.
	Mar. 17.	...	6	12.	Green Statts.
	Apr. 4.	...	7	42.10	J. I. Siegreest.
'91,	Apr. 4.	307	1078	208.30	John Meredith.
	Jun- 6.	...	9	53.40	Peter Ehler.
	2.	...	80	38.25	E. H. Underhill.
	July 3.	...	1	35.	John Neville.
	6.	...	2	85.	S. J. Smith.
'90,	Nov. 15.	...	3	500.	Anna & C. Bernaul.
'91,	Dec. 22.	...	4	152.20	Iza Graham.
	Jul- 22.	...	85	57.00	J. C. Robertson.
	"	...	6	47.	Jerry Pondoan.
	23.	...	7	57.50	R. A. & Eva Wil-
					liams.
	Oct. 22.	...	8	27.61	W. E. Brabst et al.
	Dec. 11.	...	9	427.20	F. G. Wood.
	Nov. 13.	...	90	94.	Anna R. Fisher et al.
	Dec. 12.	...	1	107.20	G. R. Parker.
	8.	...	2	100.	Henry Frey.
	Oct. 19.	...	3	130.	J. R. Briscoe.
	Dec. 21.	...	4	55.20	C. M. Dorsett.
	24.	...	95	86.20	Ed. C. Skinner.
	26.	...	6	61.50	J. Salenberger.
	22.	...	7	348.13	C. W. Ray.
'92,	Jan. 2.	...	8	27.20	W. H. Brooks.
	7.	...	9	58.	E. E. Sutton.
	2.	308	1100	33.50	J. F. Otto.
	9.	...	1	92.	Wm. H. Imel.
'91,	Dec. 23.	...	2	90.90	do.
	24.	...	3	85.	S. L. & D. Bushline.
'92,	Jun- 9.	...	4	58.20	H. Graham.
	Dec. 23.	...	5	204.	Wm. H. Imch.
'90,	Apr. ..	...	6	600.	J. W. Underhill.
	Oct. n9.	...	7	3,000.	John A. Burk.
	Dec. 18.	...	8	128.	L. S. Lesh.
	20.	...	9	150.	Martha & R. Ross.
	29.	...	10	31.10	J. W. Comforth.
'91,	Feb. 4.	308	1111	27.57	J. W. Williams et al.
	7.	...	2	58.70	J. B. Trickey.
	Apr. 20.	...	3	5,173.93	Mary A. & J. Meagher.
	"	...	4	460.	do.
	"	...	15	5,432.94	do.
'90,	Oct. 1.	...	6	181.40	do.

'91, Mar. 20.	...	7	20.	W. H. & F. H. Weiswell.
Apr. 25.	...	8	107.40	Wm. Wertbaugh.
11.	...	9	50.	John & Mary Meagher
25.	...	20	59.15	J. W. Donovan.
20.	...	1	889.40	Mary A. & J. Meagher
July 6.	...	2	67.90	E. F. Cavanaugh.
Apr. 1.	...	3	500.	E. E. Van Duesen.
Mar. 1.	...	4	800.	D. B. Peters.
Jan. 9.	...	25	497.85	Thos. Jones.
16.	...	6	80.20	H. Wellington.
Oct. 1.	...	7	11,513.25	M. & J. Meagher.
"	...	8	4,000.	do.
Jun- 27.	...	9	2,503.70	John A. Burk.
Nov. 1.	...	30	110.10	C. F. Lectie.
Dec. 13.	...	1	535.70	Anna A. Branz.
Jun- 25.	...	2	112.38	Eli Nixon.
'90, Oct. 3.	...	3	80.	W. H. Barstow.
'91, Mar. 10.	...	4	125.	Henry W. & F. E. Polek.
Jun- 1.	35	35	17.70	O. H. Parker.
1796				
Apr. 2.	...	6	500.	W. H. Barstow.
'89, Nov. 6.	...	7	101.50	Lewis S. Leach.
'90, 1.	...	8	294.80	G. R. Meredith.
15.	...	9	500.	Anna & C. F. Benard
18.	...	40	101.80	Chas. Donovan.
'91, Oct. 17.	...	1	51.75	Gus R. Nisser.
1.	...	2	1,874.55	M. C. Frank.
'91, Oct. 23.	308	1143	500.	M. C. Frank.
Apr. 20.	...	4	100.	J. R. Gatrall.
'90, Nov. 26.	45	....	105.20	Pol't. Flour.
Dec. 26.	...	6	150.	J. & J. Culver.
'91, Feb. 28.	...	7	68.	Jasper Connett.
'92, Jan. 1.	...	8	1,300.	Henry W. Neuman.
'91, Apr. 25.	...	9	138.80	N. Wendall.
14.	309	50	40.	Wm. Aldrich.
4.	...	1	215.57	John B. C. & W. Meredith.
Jan. 1.	...	2	75.	Chas. W. Putnam.
Dec. 27.	...	3	933.	W. H. Barstow.
31.	...	4	54.45	John Cochel.
Jan. 3.	...	55	14.60	do.
20.	...	6	22.	G. D. Buckmaster.
Mar. 14.	...	7	166.50	D. I. Hunter.
Oct. 6.	...	8	285.80	John Faul.
Sep. 30.	...	9	50.	W. F. Ferman.
Oct. 6.	60	....	125.	Nelson Blue.
Aug. 7.	...	1	525.	do.
Jan. 16.	...	2	122.50	C. A. McDaniel.
16.	...	3	36.80	do.

	Mar.	20.	...	4	64.25	C. A. & J. B. Clabby.
	Apr.	2.	...	65	1,300.	W. H. Barstow.
	Mar.	20.	...	6	62.50	C. A. & J. B. Clabby.
	Apr.	25.	...	7	142.80	Geo. Barstow.
		2.	...	8	500.	W. H. Barstow.
		2.	...	9	500.	do.
'89,	Nov.	6.	...	70	101.50	Lewis Leash.
	Dec.	12.	...	1	1,020.	W. A. Meagher.
		12.	...	2	1,403.42	do.
	Oct.	21.	...	3	200.	Wm. McDaniel.
	"		...	4	200.	do.
'89,	Oct.	21.	309	1175	200.	Wm. McDaniel.
	"		...	6	300.	do.
	Dec.	10.	...	7	500.	C. M. Donovan.
.....			...	8	500.	do.
	"		...	9	600.	do.
	"		...	80	500.	do.
	"		...	1	400.	do.
'90,	Apr.	7.	...	2	200.	Eli Nixon.
	"		...	3	110.	do.
	"		...	4	140.	do.
	"		...	85	250.	do.
	"		...	6	310.	do.
	Jul.	10.	...	7	610.07	N. Elliott.
	"		...	8	610.07	do.
	"		...	9	610.07	do.
	"		...	90	1,220.72	do.
	Sep.	27.	...	1	1,400.	Thos. Jones.
	Nov.	15.	...	2	500.	A. & C. Barnard.
	"		...	3	671.55	do.
	Sep.	10.	...	4	600.	J. G. Richards.
	"	"	...	95	600.	do.
	Feb.	7.	...	6	578.41	D. Meloy.
	"		...	7	578.41	do.
	Dec.	24.	...	8	931.	W. H. Barstow.
	"		...	9	933.	do.
'91,	Mar.	1.	310	1200	46.80	J. W. Reider.
1797						
'91,	Mar.	7.	310	1201	49.	David Maloy.
		4.	...	2	250.	W. H. Brook.
		1.	...	3	34.50	J. W. Rider.
	"		...	4	31.50	do.
	"		...	5	100.	do.
	"		...	6	100.	do.
'91,	Mar.	1.	310	1207	100.	J. W. Rider.
	"		...	8	950.	do.
	Jan.	16.	...	9	1,000.	Wm. McDaniel.
	July	6.	...	10	373.50	N. Elliott.
'92,		15.	...	1	150.	Thos. Price.
		9.	...	2	430.	J. M. Meredith et al.

Jun- 18.	...	3	200.30	N. Wendall.
Mar. 25.	...	4	877.54	Wm. Ellis.
Jun- 18.	...	15	50.	Henry Fry.
Sep. 14.	...	6	115.	M. Wertsbaugh.
5.	...	7	100.	A.C. & Lizzie Russell.
5.	...	8	100.	do.
5.	...	9	100.	do.
1.	...	1220	4,301.40	M.A. & John Meagher.
Aug. 16.	...	40	2,000.	M. C. Frank.
Apr. 1.	...	1	400.	Lizzie K. Frank.
"	...	2	400.	do.
"	...	3	400.	do.
Sept. 7.	...	45	150.	Wm. & Theo. McDaniel.
22.	...	6	200.	Park W. Cook.
7.	...	7	250.	Wm. & Theo. McDaniel.
Oct. 18.	...	8	200.	J. S. Collings.
18.	...	9	200.	do.
'89, Nov. 6.	315	46666	101.50	Louis Lesh.
'89, Dec. 12.	...	70	1,020.	M. A. Meagher.
'90, Jul- 10.	...	93	610.07	N. Elliott.
"	...	94	610.07	do.
"	...	95	610.07	do.
"	...	96	1,220.72	do.
Sep. 27.	...	97	1,400.	Thos. Jones.
Oct. 30.	...	99	500.	do.
'90, Nov. 15.	316	46701	500.	Anna & Chas. Benard.
"	...	2	500.	do.
"	...	3	671.55	do.
Sep. 10.	...	4	600.	J. G. Richards.
"	...	5	600.	do.
'91, Feb. 1.	...	6	102.	E. & A. Morris.
6.	...	7	162.94	Geo. E. Pence.
7.	...	8	578.41	I. Maloy.
"	...	9	578.41	do.
'90, Dec. 24.	...	46710	934.	W. H. Barstow.
"	...	1	933.	do.
17.	...	2	300.	M. C. Frank.
'91, Mar. 1.	...	3	46.80	J. W. Reider.
Feb. 7.	...	4	51.02	David Maloy.
"	...	5	49.	do.
Mar. 4.	...	6	250.	W. H. Brook.
"	...	7	250.	do.
1.	...	8	34.50	J. W. Reider.
.....	...	9	31.50	do.
Feb. 7.	...	46720	49.	David Maloy.
Mar. 1.	...	1	100.	J. W. Reider.
1.	...	2	100.	do.
"	...	3	100.	do.
"	...	4	950.	do.

	Jan. 16.	...	25	1,000.	Wm. McDaniel et al.
	Mar. 26.	...	6	162.75	C. F. Schawl.
	Apr. 9.	...	7	1,000.	W. H. Barstow.
'92,	Nov. 10.	276	1250	100.	L. S. Lesh.
	"	...	1	159.83	do.
1798					
'92,	Nov. 8.	...	1252	120.	J. B. Bellairs et al.
	Mar. 28.	...	3	210.28	Wm. Ellis.
	Feb. 24.	...	4	150.	C. L. Wallace.
'92,	Mar. 28.	276	1255	95.	C. Layher.
	"	...	6	210.29	Wm. Ellis.
'91,	Apr. 17.	...	7	250.	F. C. Mustain.
'92,	Dec. 23.	...	8	50.	John W. Reider.
	"	...	9	80.	do.
	Mar. 23.	...	60	50.	James S. Caywoods.
	Sep. 5.	...	1	100.	A. C. Russell et al.
Total.....				123,865.86	

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EXHIBIT "15-A."

Stark & Mosher Notes as Shown by Discount Register "A."

Date.	Page.	No.	Amt.	Name of maker.
'84, Dec. 29.	...	15000	90.	B. F. Flock.
'85, Mar. 17.	...	15001	48.50	Chas. H. Heaton.
'86, Jan. 21.	5	15220	1,000.	S. T. Mead.
Feb. 8.	...	15229	483.95	O. N. Kelley.
'84, Dec. 12.	...	15230	48.35	J. D. Emoyer.
Coupon 84.	...	15231	32.	Jno. Guthrie.
'86, Feb. 12.	...	15245	107.50	Jno. Widdle.
Feb. 23.	...	15249	500.	J. C. Kilner.
25.	6	15253	16.35	J. M. W. Comfortin.
25.	...	15254	21.50	J. E. D. Tong.
27.	...	15258	81.	F. A. Johnson.
20.	...	15260	900.	J. F. McConaughy.
Mar. 1.	...	15261	200.	C. O. Wilcox.
Feb. 28.	...	15262	150.	F. P. Baker.
23.	...	15263	67.	D. E. Dickson.
.....	...	15264	68.	do.
Mar. 10.	...	15265	59.40	J. C. Brown.
11.	...	15267	325.84	Jno. Offerst.
.....	...	15268	51.75	S. F. Wood.
10.	...	15269	357.90	N. A. Dean.
13.	...	15271	28.	J. H. Crawford.
.....	...	15273	79.	G. W. Sprague.
22.	...	15279	168.30	W. J. Miller.
.....	...	15280	33.20	Jos. Clabby.
25.	...	15288	545.	R. G. Middleton.
.....	...	15289	11.90	M. K. Whitmore.

29.	...	15290	15.75	A. Trickery.
.....	...	15291	183.20	W. Meredith.
Apr. 2.	...	15293	575.40	P. R. Nally.
3.	...	15294	19.90	H. S. Amstead.
9.	...	15297	50.	A. Jeffery.
'86, Mar. 27.	...	15301	32.20	A. Whitmore.
25.	...	15302	11.35	A. Harner.
Apr. 17.	...	15303	37.20	J. C. Everetts.
.....	...	15304	7.	J. Chaff.
.....	...	15305	65.20	A. Zillman.
Mar. 7.	...	15313	53.	J. H. York.
'84, Dec. 12.	...	15314	2,085.	Bidwell & Chapan.
10.	...	15315	142.	Jno. Denoyer.
'85, Mar. 18.	...	15315	142.	do.
May 10.	...	15315	89.20	O. F. Linstrom.
19.	...	15316	35.80	C. E. Spellman.
Jun- 7.	...	15317	156.40	Jno. Miller.
12.	...	15320	17.40	C. N. Halstead.
.....	...	15321	25.72	do.
.....	...	15322	119.50	C. M. Rogers.
30.	...	15323	77.	C. Pickrell.
July 7.	...	15324	38.	Jos. Baurer.
9.	...	15325	274.25	W. S. Rush.
18.	...	15326	100.	M. E. Tieger.
.....	...	15327	111.20	do.
27.	...	15328	38.90	Jno. Denoyer.
29.	...	15329	210.20	A. D. Camp.
Aug. 1.	...	15330	290.	L. Cook.
.....	...	15331	82.20	L. H. Donaldson.
.....	...	15332	275.	A. S. Prewett.
.....	...	15333	70.	Jacob Friesen.
Oct. 29.	...	15334	158.90	J. Baurer.
1800				
Oct. 23.	...	15335	88.75	J. S. Bennett.
Nov. 5.	...	15336	198.20	W. W. Shufelt.
14.	...	15337	917.70	H. C. Graves.
20.	...	15338	207.40	C. M. Rogers.
'85, Nov. 1.	7	15339	550.	S. J. Wagner.
2.	...	15340	175.60	D. T. Hunter.
8.	...	15341	41.50	J. B. Weeks.
.....	...	15342	31.45	H. Tissman.
.....	...	15343	32.95	G. Bond.
.....	...	15344	108.05	O. M. Hurst.
10.	...	15345	43.	J. H. Dobbins.
29.	...	15346	140.	W. Miller.
.....	...	7	223.79	Chas. Green.
.....	...	8	71.64	Lighe Bros.
.....	...	9	50.	S. A. Myers.
Dec. 3.	8	15350	225.	Armor.
.....	...	1	166.58	Ed Bates.

15.	...	2	722.55	L. P. Lundeen.
23.	...	3	163.50	E. Bates.
.....	...	4	44.	J. Duck.
.....	...	5	91.23	A. Puckett.
.....	...	6	22.60	E. Ferris.
'86, Jan. 26.	...	7	25.75	C. P. Bertram.
.....	...	8	45.	O. V. Marble.
.....	...	9	50.	F. Wisley.
.....	...	60	1,000.	E. W. Mosher.
.....	...	1	107.50	S. Brown.
.....	...	2	530.	E. P. Foley.
.....	...	3	16.50	Hy Muir.
Jan. 7.	...	4	607.70	W. S. Siewell.
8.	...	65	221.10	S. A. Youngus.
6.	...	7	311.30	A. Puckett.
12.	...	8	193.50	G. D. Moore.
12.	...	9	100.	W. F. Merriam.
12.	8	15370	363.	H. Pickrell.
.....	...	1	98.	G. Flock.
.....	...	2	400.	G. W. Dorsey.
.....	...	3	100.	F. M. Bremer.
13.	...	4	22.50	H. Muir.
.....	...	75	269.80	E. Keller.
12.	...	6	145.	W. F. Keistler.
11.	...	7	76.50	G. R. Meredith.
10.	...	8	46.	Wm. Herzen.
11.	...	9	397.50	T. H. Hamilton.
10.	...	80	30.	L. Dean.
8.	...	1	58.10	Jas. A. Johnson.
29.	...	2	204.	A. Day.
.....	...	3	103.20	do.
27.	...	4	500.	A. M. Adair.
23.	...	85	103.50	C. F. Johnson.
.....	...	6	26.	J. B. Clabby.
20.	...	7	103.20	L. Dean.
10.	...	8	32.	J. M. Ellis.
1.	...	9	105.90	W. Each.
.....	...	90	300.	C. E. Foursbach.
.....	...	1	500.	E. W. Mosher.
10.	...	2	10.40	F. H. O'Bryan.
1.	...	3	112.20	S. Meloy.
2.	...	4	154.20	H. Wagner.
.....	...	95	127.25	A. F. Johnson.
1.	...	6	195.50	S. Dean.
.....	...	7	175.95	J. W. Underhill.
.....	...	8	58.45	J. Hoffman.
.....	...	9	108.70	F. Keller.
'86, Feb. 2.	9	15400	190.80	J. B. Reed.
.....	...	1	34.50	G. R. Ingalls.

1801

86, Feb. 10.	9	15402	108.70	Aug. Engblom.
Mar. 1.	...	3	52.	H. Pickrell.
.....	...	4	416.	L. J. Gandy.
.....	2.	405	50.	Geo. Mitchell.
.....	7.	6	105.	L. H. Mosord.
.....	.....	7	26.25	G. M. Meredith.
.....	.....	8	40.	G. M. Foster.
.....	.....	9	129.35	L. S. Litchburger.
.....	1.	410	1,180.50	H. M. Woolman.
.....	3.	1	59.	J. B. Clabby.
.....	7.	2	16.75	H. W. Funk.
.....	.....	3	97.40	R. N. Dickson.
.....	11.	4	39.50	W. Gabral.
.....	.....	15	112.63	L. Imbroud.
.....	10.	6	550.	W. B. Atkins.
.....	11.	7	32.	A. M. Adams.
.....	1.	8	108.70	J. A. Anderson.
.....	.....	9	109.20	J. Lindquist.
.....	.....	420	126.65	C. Samille.
.....	.....	1	48.20	J. Bannur.
.....	.....	2	192.50	H. Kelby.
.....	2.	3	54.50	O. Jackson.
.....	3.	4	283.10	Jno. Meredith.
.....	6.	25	150.	N. V. Harlan.
.....	8.	6	140.	John Miller.
.....	3.	7	200.	J. D. Dutton.
.....	9.	8	18.	L. Dean.
.....	6.	9	400.	do.
.....	7.	430	40.	S. A. Shelby.
'86, Mar. 9.	9	15431	44.	J. A. Sutton.
.....	10.	2	22.50	Jno. Heller.
.....	1.	3	108.	F. Heller.
.....	3.	4	10.	G. D. Pence.
.....	4.	35	331.95	L. Dean.
.....	6.	6	1,635.	M. C. Frank.
.....	.....	7	45.	C. Wallbacht.
.....	7.	8	42.05	J. J. Richards.
.....	.....	9	112.20	J. Rackin.
.....	10.	440	28.	A. E. Wobgram.
.....	.....	1	200.	G. B. Francer.
'85, Nov. 14.	...	2	109.	J. Peters.
'86, Mar. 20.	...	3	607.	do.
Dec. 3.	10	15484	231.20	First N. B. York.
'81, Nov. 3.	11	15503	400.	W. F. Willine.
'84, Aug. 14.	15	15726	237.50	Wm. Dyer.
'86, May 5.	16	15753	67.50	Wm. Holmes.
Mar. 10.	...	15756	95.	I. McConaughy.
'85, Dec. 9.	...	15763	60.	H. H. Tolls.
Aug. 9.	...	15783	145.	W. N. Baker.
'86, Mar. 30.	...	4	125.	W. Naw.

.....	...	5	85.20	L. C. Nolan.
Apr. 9.	...	6	75.20	E. Fees.
Oct. 2.	17	15823	333.90	Chas. F. Johnson.
Apr. 28.	19	15902	22.20	F. A. Bacon.
Feb. 6.	...	15940	18.	F. P. Baker.
8.	...	41	103.	C. Stark.
May 17.	...	44	10.50	H. A. Farding.
22.	...	45	200.	R. B. Green.
5.	20	15970	122.	Wm. Willis.
21.	21	16018	100.	H. Durtrich.
June 9.	...	16033	30.75	John Sims.
10.	...	16035	280.	Harry White.
Feb. 17.	22	16038	108.	E. C. Stally.
20.	...	16071	55.	S. C. Davis.
Mar. 8.	...	16087	55.25	G. E. Marden.
1802				
.....	...	16088	184.40	Joe Neville.
9.	...	16089	27.70	Geo. Brown.
.....	...	16090	229.70	M. Brice.
11.	...	93	449.	A. C. Montgomery.
12.	...	8	498.50	J. Hackenthall.
.....	...	9	163.50	H. Miller.
Feb. 10.	23	16106	25.	J. L. Drury.
Mar. 16.	...	16111	307.50	S. A. Sedgwick.
22.	...	16142	846.40	A. Fickey.
12.	...	16143	54.	W. H. Miller.
17.	...	16144	200.	J. W. Jackson.
30.	24	16163	241.20	W. H. Cook.
29.	...	66	103.20	J. R. Frickey.
.....	...	67	65.70	Ed George.
27.	...	72	250.	Jos. Horkenthal.
3.	...	77	75.	E. Andrews.
Apr. 1.	...	78	130.20	M. E. Bendant.
.....	...	79	233.20	E. Andrews.
.....	...	16180	65.	S. S. Stuart.
3.	...	1	442.62	W. Hokenbaum.
5.	...	2	1,000.	J. N. Davidson.
7.	...	9	12.50	S. Fint.
10.	...	16195	105.	A. Trickey.
Mar. 23.	25	16202	18.	G. Cald.
'86, Apr. 14.	25	16204	44.50	L. R. Millner.
15.	...	5	20.	Jos. Ellis.
14.	...	6	275.	R. Sanders.
16.	...	8	27.	R. J. Ramsey.
10.	...	9	165.45	E. M. Chenney.
17.	...	13	36.	F. Helmer.
Mar. 12.	...	16249	45.	H. B. Gue.
Mar. 12.	26	16251	162.50	H. W. Hopmaster.
'85, Jul- 11.	...	2	45.	J. Clabby.
Dec. 22.	...	3	27.50	A. N. Stuart.
30.	...	4	48.	J. R. Brumsey.

	Jun-	19.	...	55	57.25	W. C. Fitzpatrick.
'86,	Apr.	3.	...	6	109.	P. Wall.
'85,	Oct.	10.	...	7	69.	J. Org.
'86,	Jan.	1.	...	8	100.	C. Green.
.....				9	35.	G. A. Wonton.
	Mar.	1.	60	.....	65.20	P. Wall.
'85,	Dec.	1.	...	1	50.	I. Hasbuck.
'86,	Feb.	1.	...	2	175.10	A. Cook.
	Mar.	1.	...	3	56.50	Michael Search.
		3.	...	4	11.46	do.
		4.	...	65	62.	do.
	"		...	6	420.20	do.
		1.	...	7	60.	A. S. Colby.
	"		...	8	52.20	W. Search.
.....			...	9	65.	R. F. Pate.
.....			...	70	100.	C. Green.
		6.	...	1	95.10	G. Greene.
	"		...	2	99.	L. F. Pier.
		6.	...	3	291.40	C. Greene.
		6.	26	16274	120.	C. H. Gue.
.....			...	5	563.	C. Tighe.
.....			...	6	40.20	F. Gunning.
.....			...	7	70.	J. E. & W. Vandeventer.
.....			...	8	59.	W. J. Kington.
.....			...	9	37.23	S. Ditch.
.....			...	80	65.	Stubbs & White.
.....			...	1	84.	C. Rice.
.....			...	2	51.65	W. A. Cross.
.....			...	3	35.85	G. Weyman.
.....			...	4	35.	do.
.....			...	85	60.	H. A. Hostetler.
.....			...	6	83.05	H. H. Chapin.
1803						
'86,	Mar.	6.	26	16287	44.20	F. K. Sanberger.
.....			...	8	10.60	C. Bennett.
.....			...	9	133.33	W. H. Young.
.....			...	90	60.	E. Vandeventer.
.....			...	1	18.75	S. Ditch.
.....			...	2	18.75	P. & A. Friezen.
.....			...	3	149.	E. L. Brewer.
.....			...	4	30.	Wm. Stafford.
.....			...	95	72.50	F. H. Brock.
.....			...	6	48.	James Prewitt.
.....			...	7	112.	H. A. Firding.
.....			...	8	30.	W. B. Willson et al.
.....			...	9	38.	E. F. W. Whitcomb.
.....		27	16300	37.50	M. A. Dean.	
.....			...	1	55.	T. W. Watt.
.....			...	2	700.	J. Tighe & Co.

.....	...	3	80.	T. Foley.
.....	...	4	59.	E. Austin.
.....	...	5	107.25	L. C. Olecott.
.....	...	6	95.	J. B. Couger.
.....	...	7	111.	H. F. Stubbs.
.....	...	8	30.	G. F. Latham.
.....	...	9	75.10	G. Wall.
.....	...	10	85.	J. W. Underhill.
.....	...	1	35.	J. H. B. Sands.
.....	...	2	118.25	J. M. Kelton.
.....	...	3	103.	T. P. Miller.
.....	...	4	78.	G. A. Gelvin.
Jun- 16.	...	16319	900.	J. F. McConaughy.
12.	...	20	400.	France & Harlan.
19.	...	3	416.	John C. Kilner.
Apr. 26.	36	16701	189.60	Geo. P. Furch.
.....	...	2	132.95	do.
28.	...	3	86.	Wm. Anderson.
29.	...	4	39.20	John Carlstrom.
May 7.	...	16731	22.60	Wm. Golden.
10.	...	3	108.	G. W. Ellis.
10.	...	4	38.	Jos. Neville.
11.	...	6	36.08	W. A. Cate.
2.	...	7	421.	Henry White.
13.	...	16747	100.	John C. Kinner.
19.	...	66	53.	A. C. Montgomery.
31.	36	90	200.	Wertesold Bros.
June 5.	...	2	26.50	P. Rayond.
12.	37	16813	10.60	John Vich.
.....	...	4	1,060.	M. C. Yank.
14.	...	18	25.90	J. W. Wendell.
Feb. 10.	38	16851	25.	J. L. Druer.
Mar. 15.	...	3	35.	I. F. Kennedy.
22.	...	8	34.20	L. Meehan.
31.	...	16867	252.20	W. R. Meyers.
'86, Apr. 9.	39	16934	30.90	J. Jones.
22.	40	59	235.50	T. L. Simmons.
21.	...	16953	129.20	W. B. Kibble.
Jun- 16.	...	16998	900.	I. J. McConaughy.
12.	...	9	4,000.	France & Harlan.
19.	41	17005	102.	A. G. Middleton.
.....	...	6	10.75	D. M. Foster.
.....	...	7	1,000.	T. F. Mead.
21.	...	17014	300.	S. H. Sedgwick.
29.	...	17044	36.	Henry Pickrell.
.....	...	5	415.	do.
Apr. 20.	50	17450	559.90	John Price.
1804				
May 3.	...	17473	109.20	H. O. Wright.
4.	...	9	81.	S. P. Worthington.
17.	51	17541	108.70	C. D. Sharp.

.....	...	2	86.25	W. A. Cate.
22.	52	54	150.25	A. W. Towns.
26.	...	75	312.80	Chas. Boggs.
24.	...	6	54.65	G. A. Waggoner.
June 1.	...	7	167.45	J. E. Phillips.
May 29.	...	8	10.	F. Feuth.
June 4.	...	17596	105.	W. Search.
3.	...	7	83.20	W. J. Thorpe.
9.	53	17613	112.	John Sims.
15.	...	38	7.	S. A. Lesseek.
Mar. 8.	...	9	60.	Jerry Torndrian.
Jun- 30.	...	17640	177.35	John Heiland.
Feb. 10.	...	1	25.	J. L. Druer.
Mar. 26.	...	5	349.20	C. Vanberg.
.....	...	6	97.20	J. P. W. Kenkins.
.....	...	7	6.75	C. Vanberg.
1.	54	17650	100.	John Heiland.
Apr. 22.	...	8	12.	C. Manburg.
20.	...	9	107.50	Jos. Greene.
'85, Nov. 31.	...	62	1,702.50	M. C. Frank.
'86, Jun- 19.	...	70	333.50	M. A. Dean.
.....	...	1	26.50	J. Martin.
.....	...	2	475.	M. B. Atkin.
May 21.	...	3	1,617.60	M. C. Frank.
Jun- 21.	...	17681	200.	Geo. B. France.
.....	...	2	25.	Geo. F. Ingals.
22.	...	8	26.50	W. R. Lloyd.
24.	...	90	107.20	P. Price.
July 6.	55	17739	10.50	J. M. Walker.
7.	...	40	35.10	Jos. Clabby.
8.	...	8	87.15	W. Willis.
9.	...	9	23.60	W. Golden.
10.	56	50	25.90	John H. Wendell.
12.	...	1	15.	John Rech.
Jun- 28.	...	2	241.20	H. H. Cook.
Jul- 12.	...	17764	665.45	Ira Dean.
1.	...	5	229.70	N. Pierce.
10.	...	6	36.80	W. A. Cate.
13.	...	17791	70.10	A. Weberten.
1.	...	2	236.50	G. D. Morris.
16.	...	3	19.90	W. S. Burtch.
18.	...	17806	127.50	Samuel Brown.
20.	...	12	10.75	E. Foster.
17.	...	3	109.20	John Lindquist.
18.	...	4	315.70	E. Hiller.
16.	...	17826	700.	J. J. McConaughy.
27.	...	33	5.50	D. M. Foster.
Jul- 28.	56	17834	416.	J. C. Killiner.
27.	...	9	1,180.50	H. M. Woolman.
28.	...	17843	88.50	Wm. Somersoon.
Mar. 10.	65	18200	24.60	J. B. Lund.

.....	.....	1	80.	do.
May 8.	...	18210	163.20	G. Everets.
Mar. 26.	...	1	27.50	Wm. Jones.
10.	...	4	331.20	Jessie R. Stark.
June 1.	66	18254	157.	Jasper Sanders.
.....	.....	5	68.60	J. H. Rush.
May 28.	...	6	150.	John Gunnell.
29.	...	7	78.	Andrew Lund.
Jul- 5.	...	18273	109.	A. Halstead.
8.	...	85	93.20	J. W. Underhill.
.....	.....	6	108.70	John Stollan.
1805				
Jul- 9.	...	92	11.50	Chas. Vangburg.
12.	67	18305	47.20	T. F. Holmbaum.
14.	...	13	486.20	W. M. Darner.
14.	...	14	17.95	C. E. Wheeler.
1.	...	15	200.	I. W. Jackson.
Mar. 5.	...	18325	256.70	Wm. Stafford.
1.	...	6	24.	Chas. Steelman.
June 14.	...	32	37.55	A. H. Campbell.
Mar. 8.	...	3	73.20	John Cladd.
.....	.....	4	92.20	G. Cladd.
Feb. 10.	...	18337	225.	J. L. Drewer.
Mar. 22.	...	47	32.50	W. Boenstadt.
17.	...	8	373.20	do.
23.	...	9	268.35	J. S. Snowberger.
'86, Mar. 27.	68	18355	32.20	V. Vanburg.
26.	...	6	56.25	Nelson Heaton.
17.	...	7	200.	O. C. Jackson.
30.	...	8	103.20	G. D. Elliott.
29.	...	18360	86.25	T. H. Cowall.
24.	...	1	20.	J. A. Buckmaster.
27.	...	4	520.75	Jas. Jackemstadt.
31.	...	5	166.20	J. M. Rapp.
.....	.....	6	160.	John Price.
22.	...	7	160.	do.
31.	...	8	150.15	John Walkup.
6.	...	78	35.	K. A. Custer.
Apr. 5.	...	9	28.	D. Feritt.
Mar. 31.	...	18380	20.	C. L. Morrison.
Jun- 10.	...	96	55.70	W. M. Smith.
11.	...	7	34.20	F. C. Furgeson.
17.	...	8	14.	John Tows.
.....	.....	9	2,489.30	E. W. Mosher.
22.	69	14833	55.70	W. A. Cate.
24.	...	9	27.50	J. M. Carder.
28.	70	82	32.20	Wm. Bishtoss.
.....	.....	3	38.10	James Powers.
Mar. 9.	...	4	52.50	W. S. Rush.
Jun- 30.	71	18507	275.	R. Saunders.

.....	...	13	130.20	M. E. Bedient.
Feb. 27.	...	21	81.	F. O. Johnson.
June 1.	...	24	421.	Harry White.
10.	...	5	184.40	John Neville.
Jul- 12.	...	18538	29.20	W. A. Thomas.
1.	...	9	1,060.	M. C. Frank.
10.	...	40	252.	W. D. Camp.
12.	...	1	54.	W. H. Miller.
13.	72	18571	108.30	R. G. Middleton.
.....	...	4	203.20	J. W. Underhill.
3.	...	5	150.	N. V. Harlan.
15.	...	6	14.20	L. C. Noland.
Apr. 20.	...	18580	102.20	O. F. Linstrom.
Jul- 21.	...	91	33.	John Sims.
.....	...	2	112.	J. Kelley.
5.	...	3	28.	T. Raymond.
22.	73	18604	5.50	J. C. Curtis.
29.	...	21	8.	John Walkup.
Aug. 3.	...	30	10.75	E. W. Mosher.
.....	...	1	152.50	H. W. Hofmaster.
4.	...	43	100.	W. Dertrick.
.....	...	4	36.90	A. L. Johnson.
19.	74	18674	439.83	C. E. Forstburg.
18.	...	5	81.	T. P. Worthington.
21.	...	80	29.20	J. A. Brunsay.
23.	...	2	363.50	N. A. Dean.
24.	...	85	168.30	W. J. Miller.
1806				
21.	...	18691	107.50	G. Gross.
28.	...	2	31.	Chas. Bell.
1.	...	3	1,178.68	H. M. Woodman.
28.	...	7	201.10	M. C. Frank.
30.	...	8	50.	Henry Jeffery.
Apr. 28.	80	18950	65.	Thos. Jones.
17.	...	1	56.	John Lett.
May 8.	...	65	350.20	H. Thurman.
11.	...	8	58.	E. W. Mosher et al.
25.	...	18971	382.10	A. Miller.
22.	...	2	165.60	O. N. Miller.
29.	...	8	129.20	A. G. Granger.
'85, Dec. 10.	...	18981	500.	R. Price.
'86, June 5.	80	18982	85.95	Jos. Allerson.
.....	...	3	154.95	H. Hullstead.
4.	...	4	113.20	Jos. Ellis.
May. 19.	...	5	60.	G. W. Frank.
Feb. 10.	82	19082	25.	J. L. Druyer.
Mar. 10.	...	3	79.20	J. N. Brinsbaugh.
27.	...	19095	74.25	B. L. Sharp.
Apr. 3.	...	99	288.70	M. Haverick.
5.	83	19105	190.20	J. C. Swartz.
.....	...	7	225.	M. Toolery.
6.	...	8	119.20	O. L. Sparke.

.....	...	9	32.70	G. Nowlan.
.....	...	19110	259.95	J. H. Wilson.
.....	7.	3	57.50	M. McCarty.
.....	10.	19115	175.70	C. M. Luman.
.....	7.	6	20.	F. C. Freeman.
.....	17.	9	181.20	I. H. High.
.....	19.	20	120.	Theo. Flemis.
Mar.	24.	1	58.	F. Lavid.
Apr.	20.	8	181.20	W. Tulmeyer.
Jul-	20.	29	60.	E. P. Cooper.
.....	25.	30	62.	W. B. Morrison.
.....	20.	31	60.	W. F. Simmons.
Jun-	18.	19141	84.50	H. N. Logan.
.....	.....	2	600.	C. W. Howell.
.....	26.	84	135.10	David Melony.
.....	.....	1	913.50	do.
.....	July 7.	85	19206	275.85 C. M. Rogers.
.....	Apr. 27.	10	583.95	A. C. Snowburger.
.....	Jul- 10.	19218	34.20	G. Melvin.
.....	15.	9	70.	Robt. McGovern.
Jun-	11.	19231	25.	Morris Mace.
.....	July 1.	86	19256	4,000. Geo. B. France.
.....	Apr. 15.	60	70.78	L. H. Dolalson.
.....	Jul- 14.	3	70.	S. S. Sturdevant.
.....	12.	4	216.20	E. W. Quinn.
.....	9.	19283	30.90	I. Jones.
.....	28.	87	19329	100. John Keiner.
'84, Aug.	14.	44	200.	Wm. Dirs.
'86, Jul-	31.	49	105.	H. O. Wright.
.....	Aug. 2.	88	19350	100. W. F. Morrison.
.....	.....	3	70.	G. W. Ellis.
.....	Jul- 19.	89	19405	24. John Offelt.
.....	Aug. 20.	8	61.50	J. Lindquist.
.....	.....	12	559.90	John Price.
.....	23.	3	380.	J. C. Killner.
.....	26.	19417	88.	Uriah B. Libble.
.....	27.	34	70.50	W. Sunderson.
.....	28.	35	53.75	D. Price.
.....	30.	43	579.95	W. McDonal.
.....	.....	4	1,051.20	Adam F. Trickey.
.....	Sept. 1.	7	60.	Levi Gondill.
.....	Aug. 30.	8	24.50	B. J. Rummey.
1807				
.....	Sept. 2.	90	19462	122.50 H. W. Hoffmaster.
.....	Aug. 23.	3	107.20	Ben Price.
.....	Sept. 4.	73	50.	Henry Jeffers.
.....	.....	4	100.	M. Cellbank.
.....	3.	5	266.50	N. O. Dean.
.....	13.	91	19514	319.50 Pratt & Foley.
.....	.....	15	229.70	N. Pierce.

	7.	...	16	10.50	J. M. Walker.
	4.	...	17	10.50	C. P. Cloud.
	21.	...	40	56.	G. H. Spears.
	22.	...	1	92.25	Wm. McDonel.
'86, Sep.	23.	91	19546	157.20	A. Freeman.
	24.	92	57	320.	John Price.
	25.	...	61	14.50	Johnson Fuss.
	16.	...	62	32.20	F. C. Furgeson.
	24.	...	63	715.90	J. F. McConaughy.
	18.	...	64	439.83	C. E. Faseburg.
	27.	...	19565	166.20	F. A. Raper.
	...	...	67	365.20	Chas. Vanburg.
	25.	...	68	1,178.68	H. M. Woolman.
	29.	...	69	255.50	G. D. Morris.
Aug.	4.	...	19580	112.	J. F. Kelley.
Apr.	3.	95	19700	22.	Robt. Bennett.
May	10.	...	24	56.50	John Ahewer.
Apr.	5.	...	26	220.	Howard Fair.
May	11.	...	29	145.	M. Ross.
Mch.	24.	...	41	100.	Ben J. Naikligall.
May	20.	...	45	20.	C. O. Morrison.
	19.	...	46	30.	C. K. Evans.
	20.	...	47	10.	W. P. Troutman.
	24.	96	55	569.20	Ida M. Bennett.
	5.	...	6	35.	W. H. Ellis.
June	4.	...	8	70.20	O. M. Miller.
	9.	...	73	58.	T. Hubert.
Feb.	25.	...	83	35.	Ulrich Wochmer.
	26.	97	19815	85.	H. P. Gue.
	18.	...	16	50.	J. P. Worthington.
	...	...	17	37.	J. F. Wells.
	...	...	18	35.	W. Willis.
	...	...	19	145.50	H. Badler.
	...	...	820	603.	G. Everetts.
	...	...	21	28.	J. Z. Wens.
'86, Feb.	18.	97	19822	46.	Aug. Engelton.
	...	...	23	10.50	F. B. Yates.
	...	...	24	89.50	M. Ross.
	...	...	25	40.	D. F. Bennett.
	...	...	26	40.75	J. B. Bennett.
	...	...	27	102.	B. Price.
	...	...	28	11.	D. Price.
	...	...	29	40.75	W. Price.
	...	...	830	108.75	R. B. Price.
	...	...	31	270.	Aug. Engelton.
Feb.	8.	...	32	150.	F. P. Baker.
Mch.	9.	...	46	147.	T. M. Parsons.
	...	...	47	5.80	A. W. Luffer.
	...	...	48	28.25	V. M. Sterns.
	...	...	49	13.	G. W. Mason.
Feb.	10.	98	53	25.	J. L. Druir.

Apr. 17.	...	881	165.95	W. Keekly.
.....	.....	82	107.20	L. S. Lesh.
.....	.....	83	1,179.70	M. A. Meagher.
Nov. 5.	...	98	11.	J. Flynn.
.....	.....	99	27.	Thos. Rearders.
5, Nov. 5.	99	19900	47.	P. Donahue.
.....	.....	1	25.	E. Kibble.
.....	.....	2	26.50	Jas. H. Smith.
8				
5, Nov. 5.	99	19903	120.	P. Flynn.
.....	.....	4	168.	J. Manning.
.....	.....	5	147.75	C. Munsters.
.....	.....	6	24.	T. Blackburn.
.....	.....	7	34.	J. Neville.
.....	.....	8	37.50	R. E. Meagher.
.....	.....	9	1,000.	M. C. Frank.
28.	...	19916	40.	S. C. Twarling.
Dec. 1.	...	17	100.	Olivee J. Moffet.
86, July 5.	...	36	460.65	James Bauer.
.....	.....	37	138.10	do.
Aug. 10.	101	20002	113.50	L. S. Summer.
.....	.....	3	116.10	R. M. Dickson.
Aug. 16.	...	16	163.90	R. P. Meek.
Sep. 13.	...	15	15.20	L. C. Nolan.
Aug. 19.	...	49	148.50	L. S. Summers.
.....	102	93	3,320.10	M. C. Frank.
Sept. 1.	103	20108	108.70	C. D. Sharp.
.....	.....	11	91.10	Jos. Clabby.
.....	.....	12	105.10	John B. Clabby.
Sep. 25.	105	20206	26.25	S. F. Wood.
20.	...	7	340.80	Oliver Baggs.
29.	...	214	253.20	W. H. Cook.
30.	...	17	192.45	W. A. Cate.
Oct. 2.	...	30	10.50	J. H. Crawford.
1.	...	37	300.	John C. Kilner.
6.	106	20254	168.30	W. F. Miller.
11.	...	62	115.	John Widle.
.....	.....	63	260.70	Wm. Stafford.
12.	...	65	190.20	J. C. Everts.
13.	...	72	100.	W. A. Foster.
14.	...	74	31.	John Sirrs.
16.	...	85	382.10	Amos Miller.
15.	...	97	84.50	H. N. Logan.
26.	107	20319	277.35	O. N. Kelley.
25.	...	20	63.	Nathaniel Pierce.
27.	...	23	26.	Gust Nisser.
.....	...	20330	25.	M. Mace.
86, Oct. 24.	107	20335	615.90	J. T. McConaughey.
29.	...	42	10.50	J. M. Walker.
30.	...	43	200.	L. T. Sorntwich.

	29.	...	44	1,178.68	H. M. Woolman.
	30.	...	45	10.50	J. H. Crawford.
	29.	...	46	679.70	Wm. McDoual.
.....		...	47	275.20	W. R. Myers.
.....		...	48	369.20	Chas. Vanburg.
	28.	...	49	56.	G. H. Spear.
	30.	108	20350	7.	S. A. Gesseck.
.....		...	1	103.20	Geo. D. Elliott.
	29.	...	2	141.	J. Hubert.
Nov.	1.	...	3	200.	E. H. Jackson.
.....		...	4	100.	Carl Retz.
	2.	...	6	100.	Anton Kreabbe.
	1.	...	7	177.95	J. E. Phillips.
	8.	...	20362	16.20	G. W. Ellis.
	1.	...	5	910.90	John Price.
	10.	...	6	51.	do.
	12.	...	9	250.80	O. M. Miller.
May	5.	110	20464	67.50	Wm. Holmes.
	1.	...	5	75.	W. H. Barslow.
Feb.	24.	...	74	300.	John Price.
June	5.	...	90	57.50	Henry Poor.
	4.	...	1	119.20	S. D. Brumbach.
	8.	...	6	120.	J. Gilmore et al.
Mch.	10.	111	20534	95.	S. M. McConaughy.

1809

'86,	Feb.	10.	111	20539	25.	J. L. Druir.
'85,	Dec.	31.	112	83	250.	P. Wenns
'86,	Apr.	7.	...	4	20.	C. Moline.
'85,	Dec.	23.	...	9	210.	G. H. Kelly.
'85,	Dec.	23.	112	20590	100.	G. Mason.
'86,	Jun-	24.	...	8	100.	James Kildil.
	Aug.	30.	114	20658	109.	J. Sanders.
	Sept.	3.	...	71	68.60	J. H. Rush.
		1.	...	77	73.20	John Chadd.
		10.	115	20715	331.20	F. B. Stark.
		13.	...	6	12.	M. Meehan.
		15.	...	7	28.20	J. R. Mulluer.
		14.	...	8	27.50	G. H. Stear.
		13.	...	9	18.75	A. H. Campbell.
		18.	...	48	103.	L. Naber.
.....		...	...	49	107.50	G. Groser.
		21.	116	20763	26.95	F. A. Bacon.
		27.	117	20816	275.	R. Sanders.
		29.	...	25	162.	John Sirrs.
.....		...	...	32	372.40	S. J. Wagner.
	Oct.	2.	...	47	30.20	L. Nolan.
.....		...	...	48	200.	J. J. Burnhamer.
		1.	118	20851	61.50	J. Linquist.
		4.	...	2	159.70	John H. Wendel.
.....		...	...	3	17.20	Henry Allcock.

	7.	70	120	.....	Allen Halstead.
May	8.	...	5	27.	Paul Fox.
Oct.	9.	...	20881	60.	James R. Brisbin.
.....	...	...	2	320.20	John Neville.
	16.	119	20909	75.	M. H. Westerbaugh.
	19.	...	10	150.25	A. W. Rowns.
	19.	...	23	70.80	Thos. Joers.
	26.	...	46	277.35	Oscar Kelley.
	27.	...	49	105.	W. G. Wood.
.....	...	220	20950	289.20	J. A. Wilson.
	27.	220	20964	300.	C. E. Farstburg.
	17.	...	81	58.	Frank Baird.
	19.	...	2	112.	J. F. Kelley.
Nov.	1.	...	3	39.70	C. Mouson.
.....	...	...	4	51.25	John Neilson.
.....	...	...	8	8.50	John Meradith.
	6.	221	21010	28.25	D. M. Stern.
.....	...	...	11	31.	W. B. Kibble.
	9.	...	17	114.80	J. B. Trickey.
	10.	...	23	875.20	W. H. Barstow.
	11.	...	27	52.50	Amos Miller.
	12.	222	66	100.	W. W. Foster.
	20.	...	78	36.	Chas. Vanburg.
	22.	...	81	10.75	Wm. Westbaugh.
.....	...	...	82	68.	E. P. Elleson.
	25.	...	91	31.20	J. A. Brumsey.
	23.	...	92	7.35	Allene Halstead.
	27.	...	99	108.70	C. C. Vagar.
	30.	223	21103	345.	Olliver Briggs.
Dec.	1.	...	7	402.	John Price.
	9.	...	8	40.	John Linquist.
.....	...	...	21120	60.	Henry H. Tolks.
	18.	...	27	163.20	Jennie Poper.
	29.	224	21157	40.70	Chas. Monson.
	28.	...	8	195.	Grafton Everits.
	29.	...	21130	354.	Allen Bages.
'87, Jan.	1.	...	6	200.	Francis Wilkins.
	12.	...	21188	50.75	C. H. Spear.
'86, Apr.	24.	225	21200	77.65	R. G. Middleton.
	6.	...	1	30.	Sam R. Allen.
May	1.	...	21211	350.20	Henry T. Shipley.
1810					
'83, May	10.	225	21214	26.	John Barney.
.....	...	...	15	150.20	F. Mirricke.
.....	...	...	16	150.	R. G. Middleton.
	8.	...	17	130.	Arthur M. Stark.
	20.	...	21234	150.20	Wm. Blumion.
	29.	...	39	280.	S. A. Lesseck.
June	2.	...	21240	118.70	Petter Kelley.
Feb.	22.	226	21257	150.	G. W. Dixon.
	24.	...	58	125.	Jno. Osborn.

	25.	...	59	250.	V. M. Selever.
	25.	...	63	40.	V. M. Selever.
Mch.	23.	...	21270	75.	W. J. Miller.
	27.	...	5	110.	J. Bosselman.
	30.	...	6	145.	W. Man.
		...	7	125.	T. C. Nolan.
	31.	...	21280	225.	E. Andrews.
	2.	...	82	275.	M. Moore.
'85, Oct.	10.	...	89	175.	W. McDaniel.
Nov.	5.	...	21290	29.50	R. W. Himinishick.
		...	1	29.	T. H. Cattle.
		...	2	13.45	E. J. Fosler.
		...	3	153.75	T. Hughes.
		...	4	74.50	W. A. Shoemaker.
		...	5	56.55	Scott & Bros.
		...	6	110.	O. P. Rose.
		...	7	56.	J. Thompson.
		...	8	46.75	J. W. Greenmill.
		...	21299	21.70	do.
		227	21300	21.50	P. J. Plants.
		...	1	85.	P. S. Augustine.
		...	2	47.	W. Miller.
'85, Nov.	5.	227	21303	18.25	J. W. Muskiller.
'86, Apr.	4.	...	4	160.	W. C. Fitzpatrick.
	15.	...	5	120.	E. A. Emerson.
	13.	...	6	85.	A. J. Moore.
	19.	...	7	85.20	E. Fees.
Feb.	12.	...	11	230.20	J. E. Stiner.
Apr.	22.	...	12	75.20	G. B. Heam.
'85, Oct.	3.	...	17	75.	S. Soan.
'86, Jun-	25.	...	21324	60.20	T. N. Brumbaugh.
Jul-	11.	...	32	225.	Daniel Hedlonia.
Oct.	13.	37	.....	173.30	W. A. Pursell.
	14.	...	21340	33.10	G. E. Morton.
Aug.	14.	228	50	127.50	A. L. Johnson.
Oct.	9.	...	21399	82.20	A. J. Gilman.
Oct.	1.	229	21435	105.	H. I. Wright.
		...	6	100.	W. F. Morrison.
		...	7	233.20	K. Towers.
		...	21441	26.25	Patrick Kennedy.
Oct.	2.	...	2	220.65	S. M. Foster.
	4.	...	3	400.	Henry White.
		...	45	161.25	M. Tooley.
	5.	...	21456	75.20	S. F. Stromments.
	6.	230	7	4,000.	France & Harlan.
	1.	...	8	93.20	J. W. Underhill.
	2.	...	9	69.	H. C. Grimes.
	7.	...	21483	107.50	E. W. Quinn.
	9.	...	86	83.20	Geo. K. Evert.
	12.	...	7	108.20	Chas. Hohmence.
		...	21531	181.20	T. A. Heck.
	18.	231	37	325.	H. H. Thurman.
	19.	...			

1811					
	22.	232	21565	135.70	F. W. Clark.
	23.	232	21572	133.	W. B. Kibble.
	26.	...	79	81.80	M. C. Beabert.
	27.	...	83	56.50	John Ahewn.
'86, Oct.	26.	...	21584	163.20	P. Raymond.
	27.	233	21507	33.	T. C. Moore.
	30.	...	621	35.50	Wm. Sanderson.
	1.	...	2	129.35	A. S. Litchdenberg.
	30.	...	3	32.70	Geo. Nolan.
.....	...	...	4	150.	John Gumell.
.....	...	...	5	100.	O. L. Thorpe.
.....	...	...	6	132.50	T. Rafferty.
Nov.	1.	...	7	80.20	E. W. Smith.
.....	...	...	8	213.20	Andrew Anderson.
Oct.	1.	...	9	280.50	G. V. Moore.
.....	...	...	30	77.75	L. H. Donaldson.
Oct.	15.	...	35	344.10	John Meradith.
Nov.	1.	...	36	8.75	do.
Oct.	1.	...	37	70.	G. W. Ellis.
Apr.	16.	234	21664	50.	Jacob Andrewson.
Nov.	11.	...	691	11.	H. B. Gue.
	12.	235	21723	38.20	M. S. Sweet.
	13.	...	727	76.60	T. M. Galloway.
	8.	...	28	72.90	T. L. Loomis.
	13.	...	29	145.50	Henry Butler.
	15.	...	21735	25.	Morris Man.
	19.	236	21752	46.25	N. A. Dean.
	23.	...	21776	100.	Jos. Harkthal.
	26.	...	785	61.50	John Willis.
.....	...	...	786	54.25	S. F. Wood.
	24.	...	787	15.50	C. Wheeler.
	27.	...	21795	159.70	John H. Wendell.
'86, Nov.	26.	236	21796	9.	D. C. Cortley.
	27.	...	97	372.40	First N. B. York.
	29.	237	21803	68.60	J. H. Rush.
	20.	...	6	382.10	Amos Milton.
	30.	...	7	615.90	J. F. McConaughy.
	29.	...	13	37.25	G. H. Spear.
Dec.	1.	...	14	41.	W. A. Dean.
	3.	...	21845	190.20	J. C. Everts.
Nov.	3.	...	46	81.25	W. H. Barstow.
Dec.	4.	...	47	91.10	Jos. Clabby.
.....	...	...	48	120.20	John Neville.
	6.	...	49	1,000.	Fred Schmidt.
	7.	238	21881	200.	Phil Beaty.
	8.	...	82	174.20	Wm. Tidanyner.
	10.	...	87	52.50	A. Nyer.
.....	...	...	88	112.	John F. Kelly.
	8.	...	89	92.	Hiram Bonnell.
	13.	...	21894	42.20	Jos. Cabby.

	10.	239	21900	875.20	W. H. Barston.
	16.	...	14	25.75	Nathaniel Pierce.
Nov.	1.	...	15	105.10	J. B. Clabby.
Dec.	20.	...	23	454.70	O. N. Kelley.
	21	...	25	15.50	C. S. Hessen.
	...	...	26	200.	W. A. Cate.
	22.	...	29	13.25	T. Hurlbut.
	27.	...	21945	40.	D. F. Clark.
	28.	...	46	81.25	Richard Brook.
	...	...	47	200.	Jane Bouer.
June	2.	240	21958	19.	G. O. Donaldson.
Mch.	20.	...	962	125.	F. Gross.
Aug.	28.	...	21974	226.60	T. C. Nolan.
Sep.	24.	240	21983	118.25	John Hyland.
Oct.	7.	...	95	934.80	J. W. Underhill.
	5.	...	21997	85.50	Jos. Allison.
Oct.	30.	241	22016	163.95	A. & P. Thiersen.
Nov.	1.	...	17	54.50	John Nilson.
	10.	242	74	173.55	Wm. Jones.
	13.	...	89	13.	G. W. Morrison.
1812					
	15.	...	22093	246.30	Hugh Kelley.
	13.	...	4	54.50	J. F. Kelley.
	15.	...	5	54.	D. Hutchinson.
	18.	243	22123	40.	Wm. Pierce.
	24.	...	138	153.20	D. Scudder.
Oct.	5.	...	9	275.88	C. M. Rogers.
Dec.	26.	244	22154	422.50	Willard Jackson.
Nov.	18.	...	66	83.60	Wm. Willis.
	29.	...	67	16.50	Cameron & Kennedy
	5.	...	68	29.50	E. T. Kibble.
	30.	171	171	122.20	Wm. Jacks.
	...	...	172	14.20	E. Hamilton.
Dec.	3.	...	22197	30.20	S. C. Nolan.
	...	...	98	15.20	do.
	...	...	99	53.50	T. M. Galloway.
	1.	245	22200	800.	H. H. Woolman.
	10.	...	24	52.75	S. R. Weir.
Nov.	23.	...	5	19.45	M. Kennedy.
	...	...	6	3.10	John Heller.
	...	...	7	23.42	J. H. Rush.
	...	...	8	14.20	L. P. Vance.
	...	...	9	29.03	J. W. Rush.
	...	...	22230	26.38	G. W. Gilmore.
	...	...	1	8.20	W. C. Gilmore.
	...	...	2	25.92	do.
	...	...	3	36.55	do.
'86, Nov.	4.	245	22241	112.30	Geo. D. Elliott.
Dec.	13.	...	44	58.	Frank Laird.
	15.	...	45	75.	Geo. Parrish.
	...	246	22260	210.75	J. A. Smith.

	16.	...	1	64.20	J. B. Clabby.
	17.	...	2	312.25	S. P. Buckmaster.
.....		...	3	32.20	Wm. A. Thomas.
Nov.	20.	...	9	21.	J. P. Lloyd.
	1.	...	22270	200.	J. L. Burnheimer.
Dec.	22.	...	84	68.	E. P. Ellison.
	24.	...	22296	331.20	J. R. Stark.
	31.	247	22302	142.	J. E. Phillips.
	30.	...	3	52.20	Peter Kelley.
.....		...	4	118.70	do.
'87, Jan.	1.	...	22312	52.50	Amos Miller.
	4.	13	13	200.	Phil Beatty.
.....		...	14	75.20	S. F. Stracamerel.
	3.	...	15	159.70	J. H. Wilder.
	5.	...	22321	108.20	Chas. Hohemsen.
	1.	24	75	.....	W. J. Miller.
	6.	...	48	382.10	A. Miller.
	1.	...	22349	90.	John Neville.
	17.	248	76	36.	C. C. Hager.
	1.	...	7	38.20	M. S. Sweet.
	18.	...	8	102.65	D. Pierce.
	19.	...	382	11.	C. F. Johnson.
	15.	...	3	416.	L. J. Ganda.
	20.	...	8	283.43	W. D. Camp.
	21.	...	9	61.	Wm. Noland.
	24.	...	22399	95.30	Robt. Fliser.
	22.	249	22400	25.	do.
	25.	...	2	12.50	O. B. Lidtke.
'86, Dec.	1.	249	22408	233.25	John Devine.
Oct.	16.	...	9	61.45	W. C. Fitzpatrick.
'87, Jan.	27.	...	12	25.	Jacob Butler.
Feb.	11.	...	19	57.	W. R. Cole.
'86, Mch.	16.	255	22707	32.	W. H. Miller.
June	5.	...	8	185.70	Henry Cole.
Mch.	8.	...	18	224.95	T. A. English.
	16.	...	29	220.	S. A. Tusick.
Aug.	30.	256	22761	68.05	D. Heaton.
1813					
	Sep.	11.	...	67	Briah Bourstadt.
.....			...	68	do.
	25.	...	22781	188.95	W. H. Blakley.
	30.	...	85	697.20	S. W. Tidwell.
	10.	...	22791	35.	J. R. Stolls.
	25.	...	92	30.	Wm. Hammerman.
	17.	...	93	25.	Herman Pepo.
Oct.	16.	257	22807	218.	J. P. Miller.
	18.	...	8	96.	J. G. Sanders.
	26.	...	13	150.15	John Walkup.
	29.	...	14	62.65	L. Tulevsky.
Sep.	25.	...	17	25.	L. C. Nolan.
	28.	...	18	35.28	J. E. Furgeson.

Oct.	2.	...	19	333.90	Chas. F. Johnson.
Nov.	9.	...	29	108.70	August Engblow.
	10.	...	22832	573.20	A. C. Truburg.
	13.	...	39	315.20	David Price.
Sep.	20.	...	43	108.70	C. D. Thorpe.
	18.	...	45	200.	John C. Kilner.
Nov.	29.	258	22863	54.	B. F. Willis.
	30.	...	6	420.	M. C. Frank.
	29.	...	7	9.95	R. H. Fair.
"		...	8	6.75	W. H. Ellis.
"		...	9	23.60	J. Conron.
'86, Dec.	4.	258	22890	215.	John Neville.
	3.	259	929	19.	Henry Alcock.
	10.	...	33	44.80	J. A. Corenan.
.....		...	4	10.50	J. W. Walker.
	9.	...	44	52.25	Chas. Brandeburg.
	13.	260	22950	17.	John Foley.
	14.	...	61	28.50	C. H. Young.
	15.	...	5	54.	Wm. Richen.
	2.	...	79	514.13	Wm. Hice.
	15.	...	80	107.50	G. Greaver.
.....		...	1	106.	H. Nebur.
.....		...	2	42.20	H. S. Hohrulone.
	12.	3	.....	58.70	W. W. Foster.
	22.	261	23014	231.20	W. S. Mock.
	27.	...	40	109.	C. H. Hemming.
	26.	...	1	105.	W. G. Wood.
	27.	...	2	67.50	W. Holmes.
	28.	3	3	100.	Henry Butler.
	28.	...	4	60.20	L. S. Wilson.
	29.	49	16	.....	J. W. Campbell.
	29.	262	23050	85.	A. J. Moore.
	31.	...	4	300.	C. E. Fandenburg.
.....		...	5	21.50	H. J. Porter.
.....		...	6	100.	John F. —.
.....		...	7	210.50	do.
	30.	...	8	48.60	J. H. Rush.
'87, Jan.	3.	...	23067	105.	H. O. Wright.
	1.	...	8	100.	W. F. Morrison.
	8.	...	85	103.70	Hulstead & Smith
	10.	263	23109	326.90	J. L. Enslow.
	12.	...	10	200.	D. M. Foster.
	12.	136	.....	82.50	T. Roberts.
'87, Jan.	18.	263	21137	312.50	Southworth & Fosle- berg.
	13.	...	9	70.78	L. H. Donelson.
	15.	...	40	966.45	W. H. Barstow.
'86, Dec.	21.	...	23141	80.	Thos. Biggs.
'87, Jan.	19.	264	51	147.17	G. F. Ingals.
	22.	...	59	129.35	A. S. Sitbenberger.
	24.	...	60	170.	E. Vandeventer.
"		...	1	193.	John Sims.

1814

'87, Jan. 25.	...	65	185.	O. B. Lidtke.
'86, Nov. 1.	...	8	13.65	W. O. Baum.
Sep. 25.	...	9	58.25	M. G. Coons.
'87, Jan. 12.	...	70	27.80	R. C. Ferris.
27.	...	1	514.80	J. B. Trickey.
28.	...	74	54.25	S. F. Wood.
"	...	5	103.20	do.
Feb. 1.	...	23197	41.20	J. Martin.
2.	...	8	159.07	J. H. Wendel.
Jun- 31.	265	203	615.90	J. F. McConaughy.
"	...	4	150.	do.
"	...	5	145.75	J. E. Phillip.
"	...	6	166.20	J. Raper.
29.	...	7	21.50	M. Mow.
"	...	8	133.	H. P. Kelder.
'86, Dec. 4.	...	23211	50.50	H. J. Levitt.
'87, Feb. 7.	...	23	31.	W. R. Meyers.
Jun- 29.	...	4	189.20	H. Mitchell.
22.	...	6	619.	W. A. Dean.
Feb. 9.	2	233	100.	L. H. Donaldson.
12.	...	5	141.80	I. D. Devin.
10.	...	6	382.10	A. Miller.
'86, Nov. 20.	...	43	36.50	K. M. Lloyd.
'87, Feb. 10.	...	8	52.50	A. Miller.
19.	...	9	1,000.	H. M. Erskin.
22.	266	23278	153.20	D. Scudder.
17.	...	9	102.65	N. Pierce.
26.	...	80	100.	W. Seidel.
"	287	40	.....	J. H. Wendell.
Mar. 1.	...	9	116.84	H. N. Robbit.
19.	267	23313	50.	W. C. Freeburg.
'86, Feb. 5.	270	450	35.20	D. Thompson.
Sep. 27.	...	8	175.20	C. M. Rurner.
Oct. 1.	...	60	79.20	J. M. Brumbaugh.
5.	...	2	84.20	P. M. do.
Dec. 8.	...	7	260.	J. W. Underhill.
Sep. 6.	...	8	63.	A. C. Freeburg.
Oct. 8.	...	9	154.65	N. A. Dean.
14.	...	71	117.80	C. F. Spelman.
16.	...	6	420.20	James Heaton.
"	...	23477	195.20	Wm. Wahl.
18.	...	80	116.80	Jacob Heinrichs.
"	...	1	111.	H. F. Stubbs.
17.	...	3	34.	E. W. Heinrichs.
16.	...	4	56.	John Lett.
Nov. 10.	271	23509	425.20	F. P. Baker.
12.	...	10	298.52	David Meley.
10.	...	3	319.	P. H. Wilson.
Oct. 11.	...	15	111.55	James Campbell.
Dec. 8.	...	524	90.20	L. M. Grinnell.

	9.	...	6	56.	I. G. Middleton.
	11.	...	7	1,200.	John Price.
	14.	...	8	7.35	Allen Halstead.
	"	...	9	58.60	do.
	15.	...	23531	126.85	G. R. Meredith.
	18.	...	3	34.	Nelson Dart.
	22.	...	7	213.	L. S. Loomis.
Dec.	22.	271	23538	23.50	P. Kennedy.
	27.	...	42	81.	W. H. Fisher.
Apr.	9.	...	3	185.	C. Bowersock.
Dec.	28.	...	4	98.	Wm. Feidmeyer.
	29.	272	60	109.20	S. C. Keen.
	31.	...	4	18.72	A. H. Campbell.
1815					
'87, Jan.	1.	272	23588	56.50	John Shorn.
	1.	...	9	244.75	J. A. Decker.
	5.	...	95	328.20	Geo. W. Mayo.
	6.	273	23605	239.95	R. H. Fair.
	8.	...	15	54.	Jos. Andrews.
	7.	...	48	287.90	
	11.	...	9	107.50	
	1.	274	685	33.75	J. B. Carlisle.
	5.	...	6	107.75	J. Haskenstal.
	"	...	7	22.10	T. W. Masteller.
	1.	...	8	54.	Wm. Miller.
	18.	...	9	152.	Geo. W. Dixon.
	15.	...	23695	272.70	N. Pierce.
	24.	275	716	27.20	A. C. Peburg.
	"	...	20	22.50	Chas. Van Burg.
'86, Dec.	12.	...	2	41.55	P. Hardman (Hard- in).
	Sept. 1.	...	3	40.	M. N. Boon.
'87, Jan.	27.	276	23759	143.50	Chas. Bowersock.
	29.	...	75	75.	N. S. Sweet.
'86, Oct.	6.	...	781	175.	W. B. Graves.
'87, Feb.	1.	277	23812	800.	H. M. Woldeman.
	1.	...	22	200.	John J. Bingham.
Mar.	1.	...	47	966.45	
Feb.	28.	...	8	173.70	
	"	278	23859	112.26	J. E. Phillip.
Mar.	7.	...	61	15.50	R. G. Middleton.
	12.	...	79	25.80	J. P. Lloyd.
	1.	...	80	166.20	Jennie Raper.
	12.	...	6	85.	A. J. Moore.
	"	...	7	131.45	S. F. Wood.
	15.	...	92	394.60	A. Miller.
	19.	279	23913	312.50	Southworth & F.
	"	...	4	1,192.20	A. Trickey.
	18.	...	5	200.	J. C. Kilner.
	"	...	6	43.05	R. D. Devine.
	19.	...	21	153.20	C. M. Cartel.

	22.	...	2	77.	J. M. Frank.
'86, Nov.	10.	280	23935	319.	P. Wilson.
May	8.	285	24201	175.	A. S. Johnson.
Oct.	26.	...	12	972.70	Harry B. Gue.
Nov.	1.	...	17	60.	Jacob Henricks.
	6.	...	8	1,125.	John Peters.
"	"	...	9	351.20	A. Woleman.
	8.	...	20	2,501.63	M. A. Meagher.
"	"	...	2	146.20	L. C. Noleen.
	13.	...	5	72.76	Geo. Flock.
"	"	...	6	95.20	A. C. Mahaffey.
	2.	...	24235	152.20	W. R. Meyers.
	20.	...	6	318.20	Chas. Danburg.
	13.	...	9	103.20	W. H. Brown.
	26.	...	43	16.	James E. Gallagher.
	15.	...	4	115.	John Widle.
	26.	...	5	425.	
	11.	...	6	145.	
'86, Nov.	27.	286	24260	500.	O. M. Miller.
	23.	...	5	150.	Daniel Peters.
"	"	...	6	150.	Jacob Peters.
	12.	...	7	40.	A. Kumbhe.
May	27.	...	8	30.	L. R. Miller.
Dec.	22.	...	9	35.	John Bif.
'87, June	1.	...	24275	190.	Wm. Meredith.
	7.	...	81	940.	James Baur.
	8.	...	2	11.75	W. Meredith.
Jan.	1.	...	90	22.	Wm. Stuart.
	4.	...	1	80.	W. S. Jeffrey.
1816					
'86, Dec.	22.	286	24292	81.80	
'87, Jan.	24.	...	7	334.20	
"	"	...	8	11.50	
	21.	287	24300	109.	J. E. Russel.
'86, Oct.	1.	...	1	42.25	T. S. O'Brien.
'87, Jan.	1.	...	2	38.75	C. E. Marble.
'86, May	19.	...	3	23.25	S. K. Gilbert.
'87, Jan.	26.	...	4	83.20	A. Lindsey.
	28.	...	16	50.	A. Frickey.
	26.	...	17	331.20	F. B. Stark.
Feb.	5.	288	24331	108.20	G. H. Campbell.
	7.	...	72	175.20	Julia A. Corcoran.
Jan.	29.	...	73	163.95	A. P. Hanson.
Feb.	8.	...	76	163.20	Martha & Robt. Ross.
	...	...	77	65.75	Ben Price.
	...	...	83	163.	Anton Wuff.
Feb.	13.	...	93	148.30	B. B. York.
Nov.	1.	...	94	69.80	W. P. Frontman.
'86, Oct.	10.	...	95	71.85	
Nov.	...	...	...	...
'87, Feb.	15.	289	24402	112.	John F. Kelley.
	17.	289	24409	39.	G. M. Walker.

	19.	...	33	12.75	A. B. Gue.
'86, Dec.	22.	...	41	50.	John Price.
'87, Feb.	22.	...	42	27.	Henry Bislos.
	23.	...	43	114.20	George D. Elliott.
.....		...	44	1,170.	Henry White.
.....		...	45	105.	
Feb. 17.	290	24456	90.		Peter Kline.
	26.	...	59	105.30	C. A. Post.
Mch. 1.	...	70	112.60		Chas. Baulauly.
.....		71	226.		John Neville.
Feb. 28.	...	83	62.65		L. Zullbody.
Mar. 1.	...	84	21.50		A. J. Porter.
.....		96	19.		
.....	7.	...	99	200.	
Mch. 12.	291	24516	26.50		J. H. Crawford.
.....		22	16.35		J. P. Lloyd.
.....		23	16.		J. W. Campbell.
Feb. 23.	...	41	29.78		John W. Rush.
Mch. 21.	...	46	158.17		
	22.	292	24555	26.65	J. S. Heenfritz.
	25.	...	62	300.	C. S. Foresbury.
	14.	...	82	70.78	L. H. Donaldson.
Apr. 1.	...	86	35.		Olson Duth.
Mch. 1.	...	87	12.50		Wm. Heinneman.
.....		88	696.50		J. F. McConaughy.
	31.	...	89	41.	C. F. Moore.
Apr. 1.	293	24608	966.45		W. H. Barneston.
.....		9	337.20		G. W. Mayo.
	6.	...	45	239.95	
	18.	...	46	82.90	
	15.	294	24659	394.60	Amos Miller.
	18.	...	79	153.20	Dreston & Scudder.
	30.	...	80	140.50	N. B. Kibble.
.....		81	50.		Chas. F. Johnson.
	11.	...	24691	830.75	L. C. Nolan.
Sep. 24.	300	24961	42.50		D. B. Huff.
'86, 21.	...	62	30.		R. B. Brabham.
.....		63	28.50		T. E. Larson.
	26.	...	64	47.50	T. H. O'Brien.
	21.	...	65	85.75	Mike Foley.
.....		66	121.50		A. Hitchcock.
.....		67	237.50		O. C. Fritz.
.....		68	23.75		
.....		69	71.25		J. F. Hitchcock.
	5.	...	24972	63.70	Geo. Lock.
1817					
Nov. 29.	...	77	1,000.		Wm. McDoual.
Dec. 1.	...	81	119.20		S. D. Baumbaugh.
	4.	...	82	325.	T. Hurlbut.
Nov. 30.	...	83	800.		Mary A. Magger.
	29.	...	84	1,000.	Wm. McDoual.

Dec.	8.	...	24993	80.	J. R. Morrison.
	6.	...	94	80.	
	9.	...	95	80.	
		...	96	80.	
	7.	...	97	80.	
	8.	...	98	80.	
	6.	...	99	80.	
		301	25000	80.	A. B. Lest.
	9.	...	1	80.	O. P. Hoger.
	8.	...	2	80.	O. V. Marble.
		...	3	80.	D. Broadwell.
'86, Dec.	10.	301	25004	118.	F. P. Owen.
	11.	...	5	1,187.70	John Price.
	2.	...	11	500.	Wm. Hice.
	13.	...	12	80.	F. O. Payne.
	15.	...	13	80.	August Engbloom.
	14.	...	14	80.	T. W. Smith.
	16.	...	15	80.	Gust Manderson.
		...	16	80.	L. S. Wheeler.
	17.	...	25017	5,493.60	Stark & Mosher.
	20.	...	18	41.20	E. Farmer.
		...	21	35.	T. J. Brunner.
	18.	...	22	40.	C. A. Morgan.
		...	25030	185.	F. W. Clark.
	23.	31	...	170.95	O. Lang.
	24.	...	32	212.	T. Halbart.
	27.	...	25043	80.	L. H. Mason.
	29.	44	44	80.	
	28.	...	45	75.	
		...	...	80.	
'87, Jan.	1.	302	25055	18.	A. J. Weinburg.
	18.	...	64	57.20	M. A. Bowe.
	4.	...	65	80.	Thos. Barber.
	9.	...	66	80.	John Piper.
	3.	...	67	80.	Fred Bittinger.
'86, Dec.	21.	...	68	80.	John Schalter.
	20.	...	69	80.	John Renquist.
	28.	...	25070	80.	Geo. H. Troutman.
'87, Jan.	20.	...	1	19.70	C. H. Young.
	17.	...	74	80.	S. R. Lillibertsen.
	18.	...	75	80.	D. J. Hunter.
'86, July	1.	...	77	11.50	C. H. Davenvarger.
'87, Jan.	1.	302	25078	143.05	Wm. Co Fen.
	28.	...	79	224.20	Jacob Gilmore.
	Feb.	5.	...	10.	E. Farmer.
'83, Dec.	6.	...	89	200.	N. M. Smith.
'87, Feb.	5.	...	25090	85.95	Joseph Allison.
	9.	...	93	280.20	
	11.	...	96	79.20	
	14.	...	98	112.20	
'86, Oct.	2.	...	99	83.25	

'87, Jan. 1.	303	25100	177.85	S. F. Wagner.
'86, Oct. 1.	...	1	112.05	S. H. Mapps.
'87, Feb. 21.	...	8	109.20	L. M. Galling.
.....	...	9	178.20	J. Worsentein.
.....	25110	84.20	Wm. Jacobson.	
..... 22.	...	13	39.20	W. E. Churchill.
..... 25.	...	17	34.20	G. W. Arlem.
..... 26.	...	23	100.	W. F. Morrison.
Mch. 1.	...	25136	70.20	C. H. Young.
1818				
.....	...	25137	220.	James A. Tucker.
.....	...	38	180.	Wm. Wahl.
Mch. 2.	...	42	47.80	Thomas E. Rea.
Feb. 28.	...	44	220.	
.....	...	45	100.	
.....	...	46	135.20	
Mch. 4.	304	25162	98.	Wm. Wetterburg.
..... 1.	...	9	38.60	J. H. Rush.
..... 7.	...	70	107.20	G. Graves.
.....	...	71	106.	H. Neighlor.
..... 8.	...	77	82.	T. E. Hunt.
.....	...	78	105.35	Wm. Jones.
..... 12.	...	25191	73.20	Sarah A. Lamb.
.....	...	92	11.50	F. Chadd.
'87, Mch. 10.	305	25201	44.80	T. A. Corcoran.
..... 12.	...	2	79.95	Jos. Ellis.
..... 14.	...	7	55.20	John J. Wade.
..... 1.	...	8	78.05	W. G. Wood.
..... 15.	...	9	200.	John Rogers.
..... 16.	...	25219	192.20	P. Wilson.
.....	...	20	100.	B. T. Willis.
..... 15.	...	21	64.60	F. A. Bacon.
..... 16.	...	22	34.20	J. Mageth.
..... 19.	...	33	218.20	Daniel Heaton.
.....	...	34	15.20	Frank Gross.
..... 22.	306	25254	53.	James H. Bill.
..... 23.	...	62	87.20	John Hampton.
..... 28.	...	76	159.20	S. C. Kline.
..... 25.	...	77	65.	Robt. Flossen.
..... 30.	...	25291	153.	G. W. Nixon.
.....	...	92	33.75	J. B. Clish.
..... 1.	307	97	3,500.	
Apr. 1.	...	25307	151.30	Jos. Clabby.
.....	...	8	45.	M. N. Brown.
.....	...	26	81.	A. R. Fisher.
.....	...	27	503.	L. S. Lormer.
..... 5.	44	44	29.50	
..... 19.	...	25345	108.70	E. F. Kibble.
..... 30.	308	78	1,242.20	Adam Frickey.
.....	...	79	300.	C. E. Fwrosburg.
..... 18.	...	25380	312.50	Southworth & F.

May	2	...	85	1,200.	John Price.
Apr.	1	...	88	800.	H. N. Woolman.
May	5	...	25394	65.70	
	1	309	25417	348.20	G. W. Mayo.
	15	...	18	394.60	Amos Miller.
'87, May	15	309	25438	733.	Jas. Bower.
	20	...	43	187.95	S. F. Woods.
	1	310	44	561.20	
	18	...	25455	153.20	Dustin & Scudder
June	1	...	72	353.70	G. W. Mayo.
	6	...	78	1,000.	W. H. Barstow.
	7	...	79	1,432.50	T. W. Marsteller.
'83, Oct.	2	...	25707	73.10	Martha Rose.
.....			8	38.70	M. Decker.
.....			9	33.	J. M. Carter.
.....			10	91.90	D. E. Foristall.
.....			11	100.	do.
.....			12	28.	do.
.....			13	107.25	Thomas Porter.
.....			14	77.40	J. W. Wahl.
Dec.	21	...	25718	173.70	Sarah M. Bustad.
	22	...	19	117.20	P. H. Friesen.
	28	...	20	213.20	Jacob Brukle.
.....			21	80.	Chas. Rhodes.
	21	...	22	80.	John W. Huff.
1849					
Dec.	30	310	25723	80.	P. Harden.
	29	...	24	80.	Adam Frickey.
.....			25725	80.	Henry Treble.
'87, Jan.	1	...	25	11,810.97	Stark & Mosher.
'85, Dec.	28	...	28	129.90	T. W. Arkin.
'87, Jan.	4	...	29	71.20	M. Moore.
	1	...	25730	135.	W. H. Jud.
	6	...	2	70.	C. R. Dayton.
.....			3	56.	F. Wilkins.
	4	...	4	16.70	A. Anderson.
	1	...	25740	81.20	A. Fabrielle.
	5	...	41	60.20	T. M. Brunbaugh.
	10	...	25748	59.20	
.....			49	155.	
	8	...	25750	286.	Samuel C. Kline.
	11	...	54	80.	F. W. Klute.
	1	...	55	37.50	S. T. Mermerald.
Jan.	15	...	58	116.20	Andrew Anderson.
	19	...	59	225.	K. P. Tawnes.
	12	...	25762	349.20	S. L. Young.
	21	...	63	223.	Belle Seeley.
	21	...	66	80.	John Bishop.
	25	...	67	415.20	G. East.
	1	...	68	392.15	W. T. Scott.
	27	...	25781	440.	W. Frelmeryer.

	1.	...	83	152.55	S. D. Jaynes.
	12.	...	84	83.20	Geo. K. Everts.
Feb.	18.	...	86	144.20	A. Wochner.
	19.	...	87	700.	J. H. Pardew.
Mch.	1.	...	25836	108.70	Aug. Engblom.
	30.	...	37	75.	M. S. Sweet.
Apr.	1.	...	25842	23.	P. Kennedy.
		...	43	22.50	Chas. Vanburg.
Mch.	31.	...	45	56.50	
Apr.	5.	...	25884	84.20	P. M. Bramban.
	1.	...	85	79.20	J. M. do.
Mch.	26.	...	86	169.	E. H. Hennings.
	30.	...	25895	150.15	
Apr.	13.	...	25929	55.	Henry Jeffers.
	30.	...	95	133.50	
	30.	...	6	335.50	
May	1.	...	26051	331.20	J. B. Stark.
Apr.	12.	...	61	298.52	David Melg.
May	6.	...	26065	239.95	R. H. Thayer.
	1.	...	75	83.20	Aug. Lindsey.
	1.	...	26081	2,623.65	M. A. Meagher.
	1.	...	118	153.45	L. C. Nolan.
June	1.	...	24	178.20	Jacob Workenstine.
	25.	...	26165	50.70	B. B. York.
	"	...	6	1,322.50	Adam Frickey.
	23.	...	7	60.	John Peters.
	14.	...	8	394.60	A. Miller.
	20.	...	9	84.50	T. J. Hunter.
	"	...	170	41.20	E. Farmer.
	27.	...	8	25.	Halstead & Smith.
	28.	...	9	70.05	H. F. Stibbs.
	30.	...	26182	312.50	Southworth & F.
	29.	...	3	363.70	G. W. Mays.
	28.	...	4	86.	W. B. Troutman.
'83, Oct.	8.	...	26455	20.	Thos. C. Fagg.
'87, Jan.	17.	...	57	490.	J. Peters.
	19.	...	8	165.20	C. F. Johnson.
	21.	...	9	72.	J. Barnston.
	22.	...	460	90.	E. D. Parson.
	24.	...	1	342.20	P. M. Blair.
	"	...	2	118.	J. Flynn.
1820					
'87, Jan.	23.	...	26463	172.95	Jno. Boshman.
	28.	...	4	299.70	H. A. Johnson.
Feb.	1.	...	65	100.	L. Worden.
	2.	...	6	173.70	Wm. Douty.
Jan.	31.	...	7	118.23	Jos. Clabby.
	"	...	26468	299.20	S. E. & F. Mesick.
	29.	...	76	213.20	Wm. James.
Feb.	9.	...	8	83.20	H. B. Gue.
'87, Feb.	9.	...	26480	85.	B. Brabst.

		1	150.	R. Thesing.
	11.	3	50.	C. Casey.
	1.	4	100.	S. J. Bingham.
	12.	5	265.	D. Heaton.
	"	6	159.90	T. M. Galway.
	22.	26491	211.50	Peter Kelley.
	1.	2	140.	Butler.
Jan.	15.	3	20.	
	24.	4	43.	
	31.	26500	14.92	Geo. Flock.
Mar.	1.	1	29.70	C. S. Holmbaum.
Apr.	28.	19	272.60	John Neville.
	29.	532	325.	O. P. Frank.
	28.	3	35.	L. M. Gunnell.
Mar.	7.	4	119.	H. Osterlock.
	7.	26537	175.20	Julia Corcoran.
Apr.	n9.	76	319.	P. M. Wilson.
May	1.	7	65.70	W. Jacks.
	13.	26611	163.	Anton Wulff.
	1.	25	163.95	A. P. Hansen.
	19.	35	23.25	S. K. Gilbert.
	1.	26657	334.20	W. B. Rowalt.
	28.	70	107.77	Geo. F. Ingalls.
	31.	26693	65.	
June	1.	709	159.20	S. C. Kline.
	3.	10	105.29	H. O. Wright.
May	20.	11	29.78	J. W. Rush.
June	4.	13	24.25	Jos. Huskenthal.
	1.	14	300.	C. E. Festelburg.
May	11.	23	145.	Martha Ross.
	9.	24	163.20	do.
June	1.	26725	29.50	E. C. Bibble.
	15.	26756	465.	Darrill & Heaton.
	1.	7	82.25	W. G. Wood.
	15.	8	237.70	Darrill & Heaton.
	13.	63	200.	C. M. Rogers.
	25.	75	100.	Henry Butler.
	28.	8	31.	B. Price.
	30.	784	513.90	J. F. McConaughy.
	29.	5	21.80	Oliver Baggs.
July	1.	26797	19.	
	9.	26804	20.	Jos. Bus.
	5.	5	299.95	R. H. Fair.
	7.	6	70.78	L. H. Donelson.
Jun-	14.	7	112.20	Jos. Smasalt.
Jul-	9.	8	1,000.	W. H. Barstow.
	1.	26816	210.75	J. A. Smith.
	1.	22	178.20	John Wolverstein.
	16.	3	10.50	Wm. Wertsband.
	14.	4	394.60	Amos Miller.
Aug.	1.	26852	32.60	John Neville.

'86, Sep.	22.	...	27212	20.	V. H. Elery.
"	"	...	3	71.50	J. C. Heinzman.
"	"	...	4	41.	James Willes.
"	"	...	27215	33.50	A. P. Meck.
"	"	...	6	40.	do.
1821					
'86, Sep.	23.	...	27217	78.	Emil Mungrush.
"	"	...	8	190.	John Pierce.
"	"	...	9	34.	do.
"	"	...	222	340.	Elvi Dean.
Oct.	2.	...	4	22.	D. B. Perrin.
Sep.	17.	...	5	25.	H. Otterbach.
	25.	...	6	97.50	Martha & R. Ross.
	25.	...	7	64.	Wm. Price.
"	"	...	8	16.75	N. Lackey.
"	23.	...	27231	88.75	B. Keef.
"	"	...	2	150.	N. Elliot.
"	29.	...	3	89.50	J. A. Buckmaster.
"	"	...	4	165.	P. Sewrtzer.
"	"	...	35	275.	E. W. Newton.
	11.	...	7	45.	J. R. Stols.
	23.	...	8	85.75	Wm. Price.
"	"	...	9	150.	Chas. Hattel.
"	"	...	40	94.50	J. A. Woodruff.
Nov.	9.	...	1	50.	
Sept.	1.	...	2	15.	
Dec.	21.	...	27244	80.	
'87, Jan.	14.	7	80	.....
	3.	...	8	80.	
	6.	...	9	80.	
Apr.	1.	...	27305	117.70	John Vick.
Mar.	17.	...	12	313.16	T. F. Carrol.
	1.	...	19	42.25	T. B. O'Brien.
	27.	...	28	75.	Jos. Allison.
	28.	...	35	574.13	Wm. Hice.
	30.	...	27344	47.80	
June	1.	...	49	43.50	
May.	30.	...	45	325.30	
	25.	...	27358	220.	H. Metz.
Jun-	13.	...	91	502.75	Wolman.
	13.	...	27404	52.20	J. J. Wade.
	14.	...	5	103.	Nobes & Graw.
"	"	...	6	107.50	G. Gross.
	1.	...	23	39.20	H. C. Churchill.
May	25.	...	27452	23.90	
Jun-	27.	...	27456	95.50	J. Pafferty.
	17.	...	7	192.20	P. Wilson.
	23.	...	8	354.	O. Bagg.
	1.	...	9	100.	W. J. Morrison.
	16.	...	60	34.20	J. Ingvelt.
	27.	...	27472	83.20	J. Chadd.

	18.	...	3	153.20	D. Scudder.
	27.	...	4	114.10	L. H. Mapps.
	6.	...	84	75.25	A. Prohaska.
July	1.	...	27513	24.	Chas. Vanburg.
	16.	...	7	100.	B. T. & W. H. Willis
	1.	...	8	3,500.	M. A. Frank.
	7.	...	46	212. 2	
	9.	...	7	171.	
	16.	...	27552	173.95	
Jun-	20.	...	8	65.	Robt. Lloyd.
Jul-	18.	...	9	2,387.20	John Price.
	30.	...	583	212.50	Southworth & Co.
	26.	...	4	84.63	C. Rhonds.
	4.	...	27594	225.	
Aug.	5.	...	613	58.50	C. D. Hasp.
	6.	...	14	82.	J. E. Hunt.
"		...	15	11.75	Sarah Bingham.
Sept.	1.	...	25	82.05	W. G. Wood.
	9.	...	6	331.20	L. B. Stark.
	9.	...	7	82.20	A. J. Gillman.
1822					
	Sept.	1.	27632	519.36	J. F. McConaughy.
	Aug.	15.	53	10.50	
		13.	27672	394.60	Amos Miller.
		15.	3	119.37	Geo. F. Ingals.
		29.	77	167.20	Porter M. Blair.
"			8	104.38	G. W. Mayo.
'87, Sep.	2.	...	27688	63.	Johan Peters.
'86, Oct.	1.	...	27959	31.70	W. A. Tomas.
Sept.	25.	...	62	30.	Wm. Hammerman.
Oct.	11.	...	28063	775.	
	2.	...	5	20.	— Jennings.
	25.	...	15	271.	Samuel Runyan.
	28.	...	16	325.	S. R. Frazier.
Nov.	6.	...	19	86.	F. Fratro.
Oct.	27.	...	28026	125.	Burnhart & Kirker.
Dec.	7.	...	7	160.	Sam B. Allen.
'87, Jan.	12.	...	28031	100.	D. M. Russell.
	13.	...	33	80.	Wm. Beatty.
	12.	...	34	80.	John Dahlgren.
"		...	35	80.	J. S. Keith.
	23.	...	28039	80.	
Feb.	5.	...	41	100.	
Jan.	22.	...	3	88.10	
Oct.	2.	...	4	177.	
Feb.	9.	...	45	221.25	
	10.	...	6	100.	
"		...	7	27.75	
"		...	8	60.	
		...	28049	18.	
	10.	...	51	71.50	

	"	...	2	53.35	
	"	...	3	71.	
	Jan.	27.	...	56	360. W. Fredmeyer.
	Feb.	23.	...	7	100. A. E. Pierce.
		22.	...	8	50. W. H. Cramer.
		10.	...	28062	28.25 Jos. Boss.
		28.	...	82	4. Geo. Ingals.
		3.	...	3	27. O. P. Hager.
	"		...	4	26.50 N. Stockton.
'87,	Feb.	3.	...	28085	25.50 F. H. Nickerson.
	"		...	6	84.43 J. W. Hebrick.
	"		...	7	20.50 A. W. Hayes.
	"		...	8	38. W. C. Churchill.
	"		...	9	15.30
	"		...	28090	20.
	Mar.	31.	...	3	160.20
	Apr.	18.	...	28131	116.80 Jacob Heinrichs.
	May	15.	...	3	115. John Widle.
		23.	...	5	45. J. H. Madison.
		10.	...	7	358.20 Chas. Dunburg.
	June	1.	...	8	101.50 W. Meredith.
	"		...	9	101.50 do.
	"		...	28140	119.20
	May	31.	...	54	29.20
	Jun-	15.	...	56	140. J. Hullstead.
		28.	...	69	38.60 J. H. Rush.
		29.	...	74	89.90 C. H. Young.
	July	1.	...	8	395.20 G. Fast.
	"		...	9	56.50 John Ahsen.
	"		...	28195	29.45
		5.	245	245	87.70
		1.	...	28290	144.20
	Aug.	1.	...	315	300. C. E. Fasselberg.
	"		...	6	41.50 Jacob Butler.
		3.	...	28	232.80 L. S. Loomis.
		1.	...	28339	200. C. Neville.
1823					
'87,	Aug.	8.	...	28351	116.20
		22.	...	84	29.50 E. T. Kibble.
		26.	...	92	89.20
		23.	...	3	159.90
		26.	...	4	40.
		22.	...	28395	16.
		27.	...	28396	492.70
		29.	...	405	187.95
		30.	...	6	185. O. Donald.
	Sept.	1.	...	18	42.50 F. P. Baker.
		1.	...	431	513.90 J. F. McConaughy.
		2.	...	2	225. K. Treves et al.
		10.	...	36	142.95 E. Vandeventer.

	12.	...	28443	320.	
	"	...	7	82.	
	10.	...	8	27.50	
	13.	...	64	14.50	Herman Moyer.
	5.	...	5	212.	J. L. Enslow.
	17.	...	6	50.	Geo. D. Morris.
Jun-	5.	...	28473	525.45	Wm. Hesse.
Sept.	14.	...	8	167.20	Porter & B.
Sep.	22.	...	488	183.	— Rush.
	13.	...	28499	349.20	
'86, Mar.	3.	...	702	175.	
Nov.	1.	...	21	419.70	Allen Hullstead.
'84, Jul-	8.	...	742	150.	
'86, Nov.	6.	...	3	376.25	
	10.	...	4	62.50	
	23.	...	28745	51.50	
	27.	...	69	52.50	Fred Southard.
	26.	...	70	230.	Robt. Ross.
	8.	...	9	30.	E. H. Jackson.
	12.	...	80	35.	Fenton Krabb.
	25.	...	28781	100.	J. A. Ellis.
'87, Jun-	11.	...	9	40.	
	12.	...	90	22.70	
	"	...	1	35.20	
	"	...	28792	36.50	
'87, Jan.	12.	...	28794	41.75	
	"	...	5	45.50	
	"	...	6	75.	
	"	...	7	36.70	
	"	...	8	25.50	
	"	...	9	80.30	
	"	...	28800	85.50	
		...	1	140.	
		...	2	80.	
Feb.	3.	...	28806	100.	
	17.	...	21	86.50	A. C. Mahaffey.
	"	...	2	64.75	Wm. Aldrich.
	"	...	3	116.	G. W. Bowen.
		...	4	27.	James Beebee.
		...	25	33.75	W. H. Cook.
		...	6	27.	V. Deich.
		...	7	41.50	L. H. Donaldson.
		...	8	35.	L. O. do.
		...	9	34.75	F. J. Fergeson.
		...	30	33.85	S. P. Gregor.
		...	1	38.	Henry Grobe.
		...	2	148.	S. P. From.
		...	3	60.	Frank Moyer.
		...	28834	75.35	Jos. Boyer.
May	27.	...	952	57.20	
June	1.	...	54	160.	
Aug.	1.	...	74	619.	James Beaur.

1824

'87, Aug.	1.	...	28987	90.	E. D. Parsons.
	"	...	28909	213.20	W. Jones.
June	6.	...	10	100.	Sarah Bingham.
Aug.	11.	...	935	163.	Anton Wulff.
	1.	...	6	31.	Ben Price.
	"	...	7	334.20	W. B. Kunal.
	15.	...	29070	129.90	Patrick Haney.
	25.	...	99	76.	
	29.	...	29108	100.	
	1.	...	9	118.	Jas. & Jno. Flynn.
Sept.	1.	...	15	220.	A. L. Johnson.
Aug.	31.	...	16	173.	Wm. Dowley.
	21.	...	29138	1,345.50	— White.
	1.	...	9	163.95	— Hanson.
Sep.	5.	...	29140	117.70	
	15.	...	64	31.50	F. O. Noogan.
	19.	...	71	159.20	S. C. Kine.
.....		...	72	115.20	do.
	22.	...	29181	161.	Jacob Wuskanten.
	26.	...	29194	239.	
	29.	...	201	70.78	
	30.	...	2	220.	
Oct.	1.	...	17	320.	W. H. Cook.
	12.	...	29239	29.35	
	1.	258	300	300.	
	1.	...	29279	82.	E. Hunt.
	20.	...	87	31.	E. A. Spears.
	31.	...	88	368.	
Nov.	1.	...	94	68.50	
'86, Dec.	6.	...	29475	67.50	N. A. Dorsen.
	8.	...	6	15.	I. Whisleter.
	"	...	7	48.75	W. H. Willis.
	13.	...	8	342.90	W. H. Churchill.
	14.	...	9	80.	N. H. Willis.
'87, Dec.	27.	...	29484	80.	W. H. Meyers.
Jun-	14.	...	5	80.	J. H. Harmon.
Feb.	4.	...	29487	125.	D. Mulhart.
'86, Dec.	9.	...	89	116.50	
'87, Feb.	10.	...	490	50.	
	"	...	1	16.85	
	16.	...	29496	8.	
	"	...	7	30.	
	"	...	8	42.	
	"	...	9	22.	
	16.	...	29501	13.	
	"	...	2	16.50	
	"	...	3	8.75	
	"	...	4	10.90	
	16.	...	5	50.50	
	"	...	6	31.	

		7	13.90	
		8	102.40	
		9	103.25	
		29510	37.50	
		1	25.	
'86, Dec.	11.	514	90.57	W. S. Rush.
'87, Mar.	7.	15	20.	Chas. A. Swan.
	Apr. 2.	22	53.	Wm. Doty et al.
	13.	29538	77.	
'86, Dec.	9.	51	60.	
'87, May	31.	54	614.20	
	June 1.	539	300.	M. C. Frank.
		70	1 000.	do.
		71	700.	do.
	Aug. 26.	29599	697.20	
	27.	601	100.	
1825				
'87, Aug.	29.	29659	300.	G. Mayo.
	31.	29636	88.65	J. B. Trickey.
Sep.	12.	63	50.	G. Gross.
	15.	64	50.	H. Nobes.
	1.	67	65.20	L. M. Johnson.
	15.	68	21.50	O. Gillman.
"		69	103.	B. F. Lewis.
	17.	29682	298.52	David Meloy.
	23.	709	74.40	
	29.	756	211.50	
Oct.	3.	768	47.80	Thos. Rea.
	18.	29801	200.	
	15.	2	24.75	
	8.	3	31.50	
	1.	11	29.50	E. F. Kibble.
	1.	12	187.95	S. F. Wood.
	26.	29	60.65	I. E. Phillip.
	18.	29830	116.80	Jacob Heindricks.
	28.	47	105.20	
"		48	163.20	
"		49	145.	
	31.	29852	513.90	
Sep.	18.	53	65.	
Nov.	1.	58	142.95	
	4.	29873	27.	John Bick.
	14.	87	322.60	
	16.	88	200.	
	17.	29889	27.20	
	28.	914	82.	J. E. Hunt.
	21.	15	31.	G. H. Spears.
Jun-	12.	992	80.	
		3	80.	
'87, Jun-	13.	30327	80.	C. Burgess.
	14.	8	80.	W. M. Wabriah.

	8.	...	9	80.	H. M. Diedrick.
	10.	...	30	80.	J. W. Parker.
	3.	...	1	80.	K. B. Brabham.
	15.	...	2	80.	F. Beatty.
	13.	...	3	80.	do.
	9.	...	4	80.	Bartholomew.
	20.	...	30336	80.	
	22.	...	39	88.	
Feb.	3.	...	46	75.	
Dec.	27.	...	41	500.	
"	"	...	42	400.	
'85.	Apr.	1.	46	200.	
'87.	Feb.	23.	30356	125.	
	Mar.	8.	345	100.	
		7.	366	157.70	
		9.	30370	175.	Edmund Smith.
	Apr.	1.	402	115.	
	Mar.	1.	424	33.	Philip Kennedy.
Total.....				338,844.14	

Total amount notes in Register "A".....	\$338,844.14
"2".....	159,465.12
"3".....	98,743.22
"4".....	123,865.86

Grand total of..... \$720,918.34

1826 Q. Under the column which you designate as "name" to what do you refer?

A. That is the makers of the various notes.

Q. Mr. Jones you have heard the testimony here with reference to the credit to the account of R. C. Outcalt, treasurer under date of April 30th, 1891, and with reference to a purported transaction which the bank had with the Lincoln Gas Company, which it is claimed accounts for this credit, have you not?

A. I have.

Q. And did you hear the testimony of some of the witnesses for the defendants.—I think Mr. Thompson, in which he stated that on the first day of May, he on behalf of the Gas Company took a note for \$10,000 into the Capital National Bank for rediscount, and that the Capital National Bank did rediscount it with the Cadiz, Ohio, bank, and that some four or five days later they were notified that the amount of the discount which was \$375.00 was charged to the account of the Gas company. Did you hear that testimony?

A. I did.

Q. Have you examined the books of the bank, Mr. Jones, to ascertain if they show that a note for \$10,000 was rediscounted by the bank on the 1st day of May, or within a few days after that, on behalf of the Gas company?

A. The books of the bank show no note of that kind at that date

or any other date near thereto received by the Capital National Bank.

Q. Do the books of the bank indicate that a note for \$10,000 was rediscounted on or about the first day of May, or within a few days thereof?

A. They do not; neither do they show—I looked up the payment as they stated of \$375.00 interest, both at the time that the 1827 note was given and at the time the note was paid and the books of the bank show that the bank received no interest on either date.

Q. Mr. Jones, did you hear the testimony of Mr. Yates with reference to a conversation you claim occurred in the Capital National Bank during the Fall of 1890?

A. I think I did.

Q. I will ask you if you can recall at this time any conversation that took place between you and Mr. Yates that calls to your mind the fact as to whether or not you did have a conversation with Mr. Yates at the time you spoke of?

Mr. BISHOP: Each of the defendants objects as incompetent, immaterial; not proper rebuttal, and as already gone into in chief.

Objection overruled.

Each of the defendants excepts.

A. Yes sir.

Q. What was it, give the circumstances.

Mr. BISHOP: The defendant Yates objects as incompetent, immaterial, and as gone into in chief and not proper rebuttal.

Objection overruled.

Each of the defendants excepts.

A. We were talking about our lameness; we are both of us a little crippled and I remember distinctly of talking about it, and the cause of our lameness, and I think he made the remark that we would make a good team,—in kind of a joking way, on account of our lameness.

Q. At what time did that conversation take place, Mr. Jones?

Mr. BISHOP: Each of the defendants objects as incompetent, irrelevant and immaterial, and not proper rebuttal.

Objection overruled.

Each of the defendants excepts.

A. It was the same time we were talking about the purchase of this stock in the million dollar bank.

1828 Q. Now, Mr. Jones, you heard the testimony of some of the witnesses for the defendants with reference to a room in the back end of the Capital National Bank, have you not?

A. I have.

Q. I will ask you if you were ever in the room at the back end of the room in which the Capital National Bank had its offices?

A. Yes sir, several times.

Q. Do you remember any particular time when you were there,—any particular instance?

A. I do.

Q. Well you may state when you were in that little room and tell how you happened in there, and how you remember it.

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, and not rebuttal.

Objection overruled.

Each of the defendants excepts.

A. The one instance I refer to was during the Republican State Convention at Lincoln at the time the candidates were Crounse and Tom Majors: they were both candidates for the nomination for Governor, and in the early evening the convention took a recess and I was requested to come over to the Capital National Bank during the evening and I did so.

Q. Give us enough of that to show what fixes the occurrence in your mind.

A. Well I was just requested to come there and talk it over and see if they couldn't get more of the Seward county delegation to vote for Mr. Majors: I was a Crounse delegate at the Convention.

Q. And you had a meeting in that regard?

A. We did.

Q. Where was that meeting held?

A. It was in this private room in the back part of the bank.

1829-1831 Q. The one that has been testified to as being next to the vault at the south end of the lobby?

A. Yes sir, it was used by customers for going in and looking over their papers, who had boxes there, and also I have been in that room several times and transacted business with both the president and the cashier. Sometimes I would be in Lincoln—on Saturday the banks closed at 1 o'clock; the front door would be locked, and any time after banking hours I would always go to this side door, and after banking hours business as a rule would be transacted in this back room.—I don't mean the business of the clerks of the bank, but if you wanted to see the president or cashier after banking hours that is where I have met them several times.

Q. Now at this political meeting how many were there,—as near as you can remember, in that room at that time?

Mr. BISHOP: Each of the defendants objects as incompetent, irrelevant and immaterial, and not proper rebuttal.

Objection overruled.

Each of the defendants excepts.

A. I am satisfied that there were as high as ten or twelve in that room at that time.

Q. You may state what your best recollection is as to the size of that room.

Mr. ROSE: Each of the defendants objects as the witness is not

qualified; incompetent, irrelevant and immaterial, and not proper rebuttal.

Objection overruled.

Each of the defendants excepts.

A. To the best of my recollection I would say that room was in the neighborhood of 10 x 12, or 12 x 14 feet.

* * * * *

1832 Q. I will ask you to turn to the account of the Farmers & Merchants Insurance Company with the Capital National Bank, the last week the Capital National Bank was open for business.

Exhibit "16-a" identified.

Q. Is Exhibit "16-a" contained in book identified as Exhibit x-64, the account to which I refer?

A. It is.

Q. And does that show the account of the Farmers & Merchants Insurance Company carried in the name of C. W. Mosher treasurer on Saturday, January 21, 1893?

A. It does.

Mr. THOMAS: We offer in evidence Exhibit "16-a."

Mr. ROSE: No objection to that.

Exhibit "16-a" received in evidence.

(Copy at next page.)

1833

"EXHIBIT 16-A."

Saturday, Jan. 21, 1893.

	Checks in detail	Total Dr	Balance.
	261.21		
Mosher, C. W., Treas.	300.		
	4.50		
	3,000.		
	3,082.65		
	3,000.	9,648.36	1,834.13"

Q. Now I will ask you, Mr. Jones, what the items, the following items appearing under the column "Checks in detail" namely, 3,000-3,082.65- and 3,000 indicate?

A. It indicates that checks of those several amounts were paid on the 21st day of January 1893 and charged to that account.

Mr. THOMAS: In addition to the offer we have made I want to include the indications at the top of the column in which the figures appear to show the nature of the items contained in the particular column, being the words "Checks in detail," "Total Dr." "Credits" and the "Balance" and ask to have the exhibit show the figures under those words.

(No objection.)

Q. I will ask you if on the 21st day of January, 1893, there appeared on the books of the Capital National Bank an account of D. E. Thompson, also indicated with the words "Hotel"?

A. Yes sir.

Q. What do the books show as the balance due that depositor on January 21, 1893?

A. Fifty-one cents.

Mr. THOMAS: We offer in evidence now Exhibit "a-17" together with the endorsement on the back of it.

Mr. ROSE: We have no objection to that.

Exhibit received (Being "Trust" Certificate, No. 88). (Certificate of stock, held in trust for Lora A. Thompson.)

(Here follows certificate of stock marked Exhibit A-17 at page 1834.)

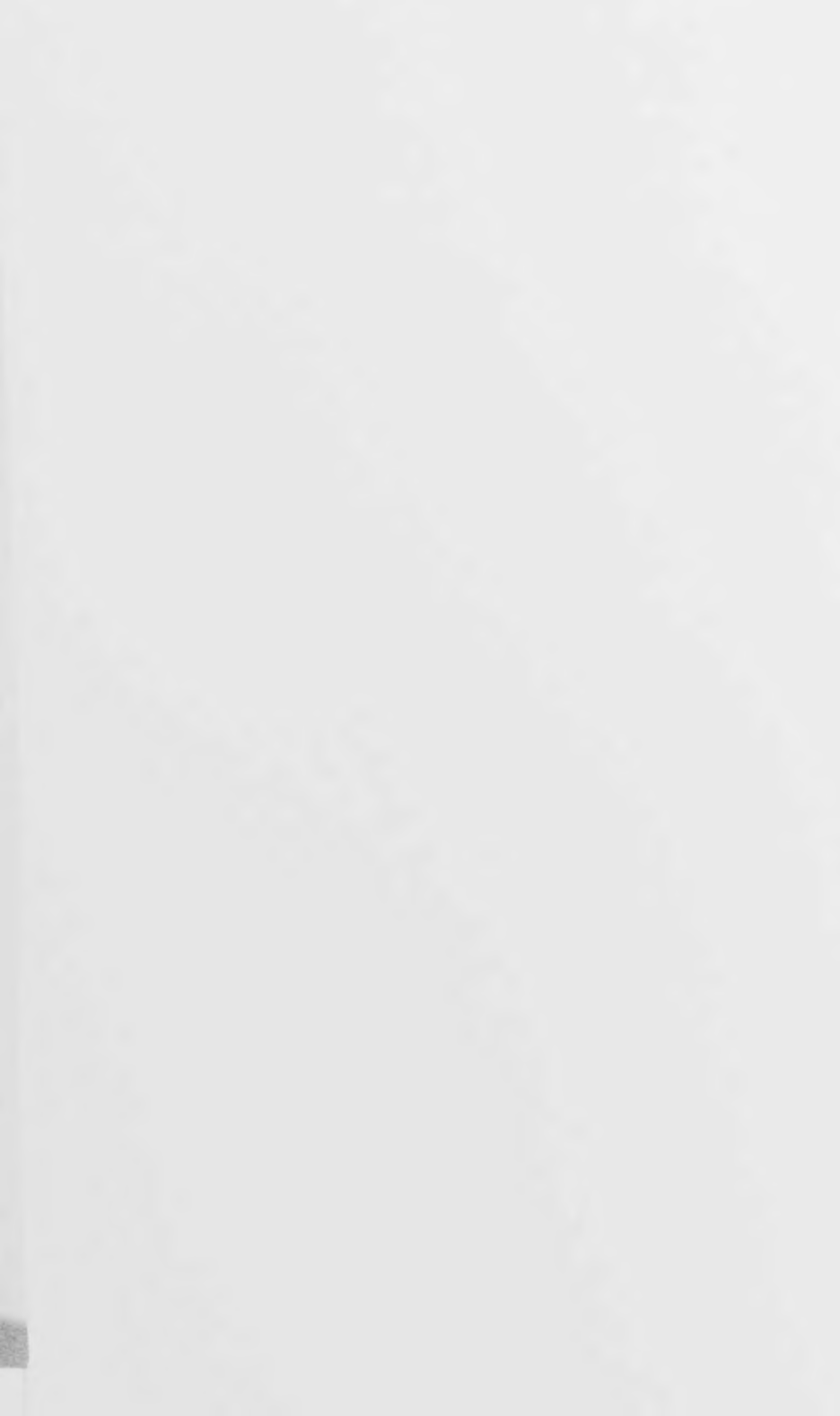


Exhibit A-17

STATE OF NEBRASKA

THE CAPITAL NATIONAL

BANK

OF LINCOLN, NEB.



No. 88

R. C. Outcalt

This is to Certify that C. W. Mosher Trustee is entitled to
Twenty — Shares of ONE HUNDRED DOLLARS each
of the Capital Stock of THE CAPITAL NATIONAL BANK transferable only on the
books of the Bank in person or by Attorney on the surrender of this Certificate
+ subject to endorsement hereon

Witness the Seal of the Bank and the signatures of the President and Cashier
this 22nd Day of November A.D. 1886

R. C. Outcalt

Cash. C. W. Mosher

Pres.

SHARES \$100 EACH

This certificate is to be held by C. W. Mosher as his successor, as trustee, and the income from it paid to D. E. Thompson yearly or half yearly as demanded for the support and education of Lora A. Thompson, now about nine years old) until she is twenty years old; unless she marries before that, and when she marries or arrives at twenty years of age this certificate is then to be delivered back to said D. E. Thompson, his heirs or assigns.

D. E. Thompson
I accept this trust,-----C. W. Mosher

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1835 Witness Jones excused temporarily.

Mr. D. E. THOMPSON, recalled.

By Mr. THOMAS:

Q. I want to ask Mr. Thompson just a question or two at this time. Calling your attention to Exhibit "a-17" I will ask you to state if on the back of that is a contract which bears your genuine signature, and also that of Mr. Mosher?

A. Yes sir, I think so.

Q. You remember about that trust agreement do you?

A. Yes sir, I remember. Mr. Marquette drew that trust agreement.

Mr. Thompson excused and Mr. JONES recalled:

Q. I hand you Exhibit "X-27" being the stock book of the Capital National Bank and containing the stubs of the certificates, and also some of the certificates of stock, and ask you if you have examined that book?

A. I have.

Q. And the certificates in that book do they begin at No. 101 and numbered thereon consecutively throughout the book, as far as they are issued?

A. Yes sir.

Q. Up to what number?

A. 156 is the last certificate issued.

Q. And each stub from number 101 to 156 is numbered consecutively in their regular order?

A. I think they are.

Q. Now I will ask you if the certificates beginning with stub number 135 and continuing to 156 inclusive appear to have been issued and the stubs filled out showing that the certificates were issued?

1836 A. Yes sir.

Q. And what does stub No. 136 indicate?

A. It shows that the certificate of stock for 10 shares was issued to D. E. Thompson, November 14th, 1891.

Q. And what does No. 137 indicate?

A. That 180 shares of stock was issued to Mosher and Outcalt on November 14th, 1891.

Q. And then the stubs show certificates issued thereafter from time to time up to January 1893 to various parties?

A. Yes sir.

Q. Have the original certificates been separated from the stubs from number 128 to 134 inclusive?

A. No sir, they have not.

Q. They still appear in the original stock certificate book?

A. They do.

Q. And you are examining them at this time while you are testifying?

A. They are, and I am.

Q. Referring then to the preceding number,—stub number 127, what does that indicate as to the issuance of the stock certificate?

A. No. 127 shows issued for 50 shares to James M. Miller, December 17th, 1891.

Q. What does stub No. 126 show?

A. That certificate was issued for 130 shares to Mosher and Outcalt on December 17th, 1891.

Q. And what does stub No. 125 show?

A. That 10 shares of stock was issued to J. B. Dodd, December 16th, 1891.

Q. And what does stub number 124 show?

A. That certificate was issued for 10 shares to J. B. Dodd December 16, 1891.

1837 Q. I will ask you in a general way if the stubs from number- 120 to 123 inclusive each show certificates of stock issued on December 16th, 1891?

A. They do.

Mr. THOMAS: We now desire to exhibit the stub book and the certificates to the court for examination.

Mr. ROSE: Each of the defendants objects as immaterial to any issue in this case, and not proper rebuttal.

Objection overruled.

Each of the defendants excepts.

(Stubs and certificates are shown to the court.)

Mr. THOMAS: We offer in evidence Exhibit X-1059 being a certified copy under the seal of the county clerk of Lancaster county, of a Bill of Sale from Mr. Outcalt to Mr. Thompson; also Exhibit No. X-1060, being a certified copy under the seal of the County Clerk of Lancaster County or a Chattel Mortgage given by L. P. Mosher and C. W. Mosher to D. E. Thompson; also offer in evidence Exhibit X-1060½ being a certified copy under the seal of the County Clerk of Lancaster county of the same chattel mortgage given by L. P. Mosher and C. W. Mosher to David E. Thompson; all these offers to include the endorsements and the certificates of the clerk and the statements showing the date of filing of the several instruments in the office of the county clerk of Lancaster county.

Mr. ROSE: To each of these exhibits each of the defendants objects as incompetent, irrelevant and immaterial; no foundation laid; too remote from the transactions of Mr. Thompson involved in this action, and not rebuttal?

Objection overruled.

Each of the defendants excepts.

Exhibits "X-1059," "X-1060" and "X-1060½" Received in evidence.

(Copies follow on succeeding pages.)

1838

Ex. 1060. O. P. II.

#51904.

Chattel Mortgage.

L. P. Mosher and C. W. Mosher
to
D. E. Thompson.

Filed Jan'y 23, 1893, at 8:30 A. M.

J. D. Woods, County Clerk.

Know all men by these presents: that we L. P. Mosher and C. W. Mosher, of Lincoln, Nebraska, for and in consideration of \$2,500 to us in hand paid, by D. E. Thompson, of Lincoln, Neb., the receipt whereof is hereby acknowledged have bargained, sold and conveyed to said D. E. Thompson, his heirs and assigns the following mentioned goods, chattels and personal property to wit: at present situated in the reception room in the dwelling house now occupied by the undersigned, at the corner of Fifteenth and K streets, in the city of Lincoln, Neb., this property viz:

2 Onyx top gilt table. 1 mahogany table, 1 mahogany cabinet, 1 blue satin corner chair, 1 gold colored reception chair. 1 oval back, red and gold easy chair, 1 large upholstered velvet trimmed lounge. one large upholstered velvet trimmed chair. 1 blue platform rocker. 1 brass reception chair. 1 yellow seated tete-tete chair. 1 hat rack. 1 small round mahogany table, 1 Marble statue called "Cat & Bird." 2 Marble statues, called "dancing boy and girl." 1 large blue rug. 3 small rugs.

The following now situated in the Library in said house, viz: 1 Wall clock. 1 Corduroy upholstered lounge. 1 Marble top center table. 1 Copper, revolving chair. 1 Large rug. 3 small rugs. 1 Silver ebonized image of Columbus.

The following at present located in the sitting room in said house, viz:

1 Corduroy cushion, for window seat. 5 down pillows 1 "Karmick & Bach" piano and stool. 1 Blue upholstered arm chair. 1 Willow rocker. 1 red willow chair. 2 red leather bottomed rockers. 1 upholstered platform rocker. 1 large yellow rug. 1 Student lamp. The following at present located in the dining room and kitchen in said house, viz:

1839 1 Large oak dining room table. 8 Oak dining room chairs.

1 Large rug. 3 Small rugs, 1 Gas range and fixtures. 1 Coal Range and fixtures. 1 large ice box or refrigerator. 1 Small gas stove and fixtures. All cooking and kitchen utensils, crockery, and table ware, chinaware all silver and plated ware all table linen, 1 large mirror over mantel. Also the following, at present located in south bed room, in said house, viz:

1 large blue rug. 2 small rugs. 1 Large walnut bedstead with mattresses, springs, bedding, pillows, sheets, blankets and covers of all kinds. 1 Walnut marble top dresser. 1 Walnut top washstand. 1 Set blue wash bowl and pitcher. 1 upholstered easy chair. 1 Upholstered chair. 1 Onyx top, silver trimmed table. 1 statue "Three Graces." 1 Red bottomed chair. all combs, brushes, handkerchief boxes in said room.

Also at present located in West bed room, the following, viz:

1 Large carpet rug. 2 Small rugs. 1 Brass bedstead with springs mattresses, covers and bedding. 1 Large red upholstered platform rocker. 1 Large red upholstered easy arm chair. 1 Red upholstered lounge. 1 Large pier glass. 1 Mahogany dresser. 1 upholstered rocker. 1 Marble top table. 2 Marble Statues "Gladiators."

Also in the East bed room, in said house, the following, viz:

1 Walnut bedstead with springs, mattresses, covers and bedding. 1 Walnut dresser. 1 Cane bottom rocker. 1 Blue and Red upholstered corner chair. 1 Small book case. Also the following chattels in said viz: 1 Blue hassack. all hall and stair carpets and rugs. iron bedstead with mattress and springs in girls' room, and all bedding therewith. Bedstead in man's room with springs, mattress and bedding. all furniture in room occupied by hired man, and furniture in room occupied by servants. 1 Billard table, with 1840 balls and cues, and curtains window curtains and shades, portiers and curtain fixtures. All gas and electric light fixtures. All mantel ornaments, Clocks, 6 Common chairs. 1 Common rocker. All bath room furniture and appliances. The intention being to hereby sell and convey all the furniture and personal property in said house of every kind and description, save personal ornaments and clothing, whether herein specifically enumerated or not, and excepting therefrom family pictures and personal presents; also the following other personal property now in the barn adjacent to said dwelling house.

1 Phaeton, two seated, 1 Light buggy. 1 Pony cart. 1 Small sleigh. 3 sets single harness. 2 Sets double harness. All curry combs, brushes, and horse furniture and belongings, in said barn. 1 horse, bay, called "Doc". 1 Bay mare called "Cora." Said horses now being used by undersigned. 2 Small ponies, called Tom and Don. 2 Geldings now with W. H. Dorgan, and bought of Church Howe, at his auction held at fair grounds near Lincoln. 1 Cow. 1 iron yard settee. 1 iron yard chair. 2 Iron porch chairs. 2 Iron porch settees. All yard ornaments. Lawn mowers, rakes, wheel barrows, yard and barn tools. To have and to hold said property unto said D. E. Thompson, his heirs and assigns forever.

The conditions of this conveyance is that whereas heretofore the said D. E. Thompson, caused a certificate of stock of the Capital National Bank of the face value of \$2,000 being certificate No. 88, to be issued and delivered to said C. W. Mosher, as Trustee for Lora A. Thompson said Mosher to hold said certificate and to pay the income thereof and dividends thereon to said Lora A. Thompson, until she should arrive at the age of 18 years and then to deliver said certificate to said D. E. Thompson, his heirs or assigns. Now if the

said Mosher shall pay to the said Lora A. Thompson, the 1841 dividends on said stock, which said Mosher guarantees shall equal \$200 per year and when said Lora A. Thompson arrives at the age of 18 years, shall return said stock or its par value \pm 2000 to said D. E. Thompson, and shall save and hold harmless, the said Lora A. Thompson, from any loss whatever on account of said stock, and shall pay to her said dividends or \$200 per year until she arrives at the age of 18 years and shall then return said stock of its par value of \$2,000 as said D. E. Thompson may elect to said D. E. Thompson, then this instrument shall be void, otherwise in full force and effect. If the said D. E. Thompson shall at any time feel himself insecure or unsafe then he may take and sell said property either at public or private sale, and from the proceeds thereof pay to said Lora A. Thompson the sum she would be entitled to, to be arrived at by multiplying the number of years that must elapse before she arrives at the age of 18 years, by \$200 and pay said sum to her or to such other person as he may select for her, and also pay to himself the sum of \$2,000.

In Testimony whereof said parties have hereunto set their hands this 27 day of December 1892.

Signed in duplicate.

LOUISE P. MOSHER.
C. W. MOSHER.

STATE OF NEBRASKA,
Lancaster County, ss:

No. 51904.

I, A. M. Trueible County Clerk of said County, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said County this 27th day of February A. D. 1899.

[SEAL.]

A. M. TRUEIBLE,
County Clerk.
WELLS, Dep.

1842

Ex. 1059. O. P. II.

51908.

Bill of Sale.

R. C. Outcalt to D. E. Thompson. Filed Jan'y 23rd, 1893, at 8.30 a. m. J. D. Woods, County Clerk.

Bill of Sale.

Know all men by these presents: that I R. C. Outcalt of Lincoln, Nebraska, for and in consideration of the sum of \$12,500 to me in

hand paid by D. E. Thompson, do hereby sell, assign, transfer and set over unto said D. E. Thompson the following described personal property to-wit: One Stallion, called "Industry," bay color, small strip in face, white hind ankles, foaled May 18, 1886; One bay colt, small star, both hind feet white, foaled March 14, 1890, called "Burlock."

One dark bay mare, without marks, foaled May, 1877, called "Edna."

One chestnut mare, foaled in 1877 called "Lena Carey."

One bay mare, star, two hind feet white, foaled April, 1882, called "Bettie Medium."

One bay filly, one hind foot white, foaled 1887, "Allice McMahan."

One bay mare, hind feet white, foaled 1886, "Tremont Queen."

One bay filly, little white on hind foot, foaled 1887, "Medium."

One bay filly, blaze face, hind legs white, foaled 1887. "Lady Burnham."

Bay mare foaled 1882, "Dollie McGregor."

Chestnut filly, foaled 1887, blaze face, "Girly King."

Bay filly, foaled 1888, "Jennie McAlham."

Chestnut filly, not named, foaled October, 1889.

Bay filly, foaled July, 1889, called "Gracie."

Bay filly, one hind foot white, foaled 1889, called the "Dutchum."

Bay filly, no name, no white, foaled June 9, 1890, called the Druse filly.

Bay filly, foaled May 17, 1890.

Bay sucking filly.

Chestnut filly, called "May Stoddard."

1843-1847 Chestnut yearling filly, called Kate Leonard.

Chestnut filly, foaled June 30/90, called Mary Beeber.

One bay filly, foaled June 7, 91 called Emma De Forrest.

One dark bay filly, foaled Apl. 12/92, called George Moore.

One bay filly called Brownie Bess, foaled Mch. 22/92.

One bay filly foaled Apl. 14/92, called Nashville Queen.

One bay filly, foaled Apl. 3/1892, called Louisa Burnham.

One bay colt, foaled June 22/92, not named.

One brown mare, 12 years old, called Jennie Lynn.

Five carts. (Road.)

One light wagon.

One hundred tons timothy hay, baled and unbaled.

Two thousand (2,000) bushels oats.

All harness, horse boots, two sulkies.

Black filly, 2 years old.

All of the foregoing personal property being on the farm of the undersigned, about 5 miles south of the city of Lincoln, known as Grassland stock farm. To have and to hold the said property unto the said party of the second part, his heirs and assigns forever.

And I do hereby covenant to warrant and defend said property against the lawful claims of all persons whomsoever.

Witness my hand this 24 day of Dec., 1892.

RICHARD C. OUTCALT.

STATE OF NEBRASKA,

Lancaster County, ss:

I, A. M. Truible, County Clerk of said County, hereby certify that the above and foregoing is a true and correct copy of the original now of record in this office.

In Testimony whereof, I have hereunto set my hand and affixed the Seal of said County this 27th day of February, A. D. 1899.

A. M. TRUEIBLE,
County Clerk.
WELLS, Deputy.

* * * * *

1848 Q. I will ask you if you have examined the books of the Capital National Bank to ascertain if the First National Bank of Crete, Nebraska, had an account with the Capital National Bank, or any money on deposit with it at or about the time of the failure of the Capital National Bank?

A. No, sir, it had not; the account had been closed out some two months, or such a matter, prior to the closing of the bank.

Q. I will ask you if you have examined the bank of the Capital National Bank to ascertain if the First National Bank of Fairbury, Nebraska, had an account with the Capital National Bank, or any money on deposit with it at or about the time of the failure of the Capital National Bank?

A. It had not.

Q. Did you examine to see?

A. I did.

Q. And it had no money on deposit with the Capital National Bank?

A. No, sir, not at the time of the failure.

Mr. ROSE: Had it previously?

A. That account I ran back three months; I didn't go back of three months.

Q. Hadn't had any within three months?

A. No, sir.

Q. Have you examined the books of the bank with reference to the day that the two notes of \$6,500 each executed by Walter T. Scott appear to have been taken into the bank?

A. Yes, sir, I did.

Q. What was the date that the books show those two notes to have entered the bills receivable of the bank?

A. August 29th, 1891.

1849 Q. I will ask you to state if you have examined the books of the bank to ascertain if any notes of this same party, Walter T. Scott, are shown by the books of the bank to have been paid and cancelled?

A. Yes, sir, I did.

Q. You may state the result of that examination.

Mr. ROSE: Each of the defendants object- as immaterial. Objection overruled.

Each of the defendants excepts.

A. The books show that notes of Mr. Scott was paid on that day aggregating \$18,133.53.

Q. Can you give the items of that aggregate?

A. I can.

Q. First I will ask you,—you ascertained this from an examination of the books of the bank that are here in court at this time?

A. Yes, sir.

Q. May may state the items that constitute that aggregate.

Mr. ROSE: Each of the defendants object as immaterial.
Objection overruled.

Each of the defendants excepts.

A. \$3,839.16—\$2,500.47—\$2,788.80—\$5,291.90 and \$680.20.

Q. Do each of those items refer to a separate note?

A. Yes, sir.

Q. Do the books of the bank show that the Capital National Bank had that date and prior thereto held those several notes as a part of its assets and bills receivable?

A. It does.

Q. And show them to have been notes executed by Mr. Scott?

A. The books show the notes in the name of Scott, yes, sir.

Q. The books show that?

A. Yes, sir.

1850 Cross-examination.

By Mr. ROSE:

Q. You went all through the Scott transactions, didn't you?

A. I can't say that I did.

Q. Did you go far enough back when his indebtedness first initiated on or about May 25, 1887, when Mr. Scott left the bank; it was then some \$7,463 wasn't it?

A. As far back as I went in Mr. Scott's account was at the time that the mortgages which he gave for the purchase of Block, I think No. 24 in Kinney's "O" street addition, was purchased by the bank and assigned to the bank.

Q. First,—did you go far enough back to see when his first note went into the bank?

A. No, sir.

Q. Do you know when his first note went into the bank? Or what the amount of it was?

A. I have no recollection.

Q. You spoke of the Thompson hotel account. Isn't it a fact that the 51¢ balance had shown there from the date of January 14th, 1893, without any change? That is to say, beginning on the 15th day of January?

A. Yes, sir, it was checked down to that, and shows on January 16th.

Q. What was the balance of his hotel account on January 3rd?

A. The opening or close of the day's balance?

Q. At the close,—at the time of the balance?

A. \$1,532.51.

Q. What was it on January 4th, at the time the account was balanced that day?

A. \$1,459.14.

1851 Q. What was it on January 5th of that same month?

A. \$1,414.66.

Q. And on the 6th?

A. \$1,404.66.

Q. Mr. Jones, you found that three checks aggregating upwards of nine thousand dollars had been withdrawn from the account of the Farmers & Merchants Insurance Company on the 21st day of January, 1893?

A. I showed that there were three checks paid and charged to the account.

Q. Now did you check out Mr. Thompson's statement far enough to see whether the Union Savings Bank took credit for one of those items on the same day, the item of \$3,035 or \$3,082.65 on that day?

A. It did.

Q. You may examine the books and see if the Lincoln Savings Bank took credit for an item of \$3,000 on that same day?

A. There is a credit of \$3,000.

Q. Now did you examine the books and check out to see as to whether the Aurora State Bank, of which Mr. Thompson was President, had a balance at the time this bank suspended—had a credit of \$7,245.65?

A. I think that is correct.

Q. Did the Lincoln Gas Company, or R. C. Outcalt treasurer have a large balance?

A. \$13,823.82.

Q. You examined the books that Mr. Honeywell left pertaining to the item of the Cadiz National Bank of \$10,000; took a recess and examined the books pertaining to that item, didn't you?

A. No, I was in the room there with Mr. Thomas; he was examining the books, and they were carried away and I haven't
1852 seen them since.

Q. Well you examined them with reference to that item?

A. I was in the room with Mr. Thomas and the books, but he done the most of the looking.

Q. Did you check up to see whether the Cadiz item was entered and charged to the Capital National Bank?

A. No, sir, I didn't check out the account; I didn't have time.

Q. You found the item entered there?

A. I made no examination that day.

Q. But you made enough to find the item entered there?

A. No, sir, but understand me to say that I don't say it isn't there.

Q. You don't say that it is not there.

A. Oh, no.

Q. In commercial usage along in the year 1891—I guess that was the year—three days of grace were allowed for payment on all commercial paper?

A. Yes, sir.

Q. What would be the amount of discount on a \$10,000 note six months at 8%?

A. Four hundred dollars.

Q. That would be exclusive of the three days of grace?

A. Three days' interest is customary to be added to; never deducted from.

Q. That's what I mean.

A. Yes, sir.

Q. So that three days' interest would be added to the \$400?

A. Yes, sir.

Q. So the discount if the note was 8% would be over \$400?

A. Now then here, so we won't misunderstand one another,—where a note is made and interest figured up it is to a certain date,—the three days' interest would be added to the amount of interest; if a note was given for rediscount, and the bank would rediscount it, they would figure the note as it appeared without the three days' grace, I would think.

Q. I am talking about the original discount, would it be six months and three days?

A. Yes, sir, I think that is right.

Q. Now suppose the Cadiz National Bank had been the original payee of the note, and Mosher had taken it and forwarded it as an intermediary or broker, and the item had never been taken in as an asset of the Capital National Bank, then it should not be entered on the books of the Capital National Bank should it?

A. Oh, no.

Q. That wouldn't be a rediscount would it?

A. No, sir.

Q. And if it was carried in that way by the Cadiz National Bank there would be no interest earnings to the Capital National Bank?

A. I would think so, for the reason that I understand that no bank has a right to rediscount and guarantee without receiving some compensation for it.

Q. I am assuming there is no rediscount and no guarantee.

A. But in this instance it was so stated that the note was given the Capital National Bank for rediscount.

Q. You are evidently overlooking the testimony of Mr. Honeywell. I am saying that supposing it wasn't a rediscount and the Capital National Bank never assumed any liability as endorser, but the money was borrowed primarily from the Cadiz bank and the Cadiz bank was the payee named in the note then there would be no interest earnings to the Capital National Bank?

A. No, sir.

1854 Q. So in that case the register of bills receivable wouldn't show the transaction, and no interest item would enter into the records of the Capital National Bank legitimately?

A. No, bills receivable wouldn't show any notes in that account unless they belonged to the bank, or had been rediscounted by the bank.

Q. Now, if you haven't examined those books—we didn't offer

them in evidence. But I refer to this book, the correctness of which Mr. Honeywell verified. Under date of May 1st did you find an entry that indicates a rediscount, or an original discount to the First National Bank of Cadiz?

A. The line to which you refer says "Capital National Bank 6 months, 8 per cent, First National Bank, Cadiz, Ohio," to Bills payable \$10,000.

Q. So the charge is made of the cash on the date, in the Journal, to the Capital National Bank, isn't it?

A. I would say that was the intention of that entry.

Q. And a counterbalancing charge is to Bills Payable, indicating the particular note?

A. Yes, sir.

Q. So that one item indicates the deposit of \$10,000, and the other indicates the source from which the deposit was made?

A. One shows a credit of \$10,000, and the other specifies a note of \$10,000.

Q. They counterbalance. Now turn to May 30, '91, and see if you find an entry in the books of the Gas company indicating interest paid on the Cadiz note.

A. The line to which you have called my attention says "Cadiz note, Capital National Bank, \$406.67."

Q. What account took credit for it?

A. It says "Interest."

1855 Q. It is charged to interest and credited to the Capital National Bank?

A. Yes, sir, there are two such items as you speak of.

Q. Now check over the description of the note, a six months 8% and see if that item of interest would exactly correspond with the interest for the term with three days of grace added.

A. Without figuring my judgment would be that it would be very close; but the item to which my attention was called was \$375, and not this item at all.

Q. The \$375 couldn't have covered the interest on that; it would have been deficient.

A. Yes, sir.

Q. Did you examine the books of the Capital National Bank far enough to see whether they indicate that the construction work of the Gas company had been financed by the Capital National Bank out of the bank's funds?

A. I have not.

Q. I also refer you to the ledger, the entries in which are verified by Mr. Honeywell and shown to have been in his hand, at page 81 in the Interest account. Do you find any reference to the item of \$375?

A. I see it says "note do, 57 \$375," and then opposite that has been written in in lead pencil the word "error."

Q. See if you find any counterbalancing entry on account of the error, and see when it is made and see what the entry is?

A. Do you want me to look down and find an amount that will agree with that?

A. Yes, sir.

A. Under date of the 17th, Cadiz interest charged \$375.

Q. That counterbalances the first charge doesn't it?

A. There is nothing to indicate that that is the same; there is simply the word "note" written in there and in lead pencil the word "error."

1856 Q. That is the original charge and this is the credit back of the item isn't it?

A. The amounts agree, that is all I can say; there is nothing on the book to indicate it is the same transaction.

Q. Do you find the Cadiz note?

A. The line to which you now point says "May 30, Cadiz note, 57, \$403.97."

Q. And that would be the interest for six months, as we have stated. What made you assume that this was a rediscount, Mr. Jones?

A. Just what the record shows.

Q. No record in the books that shows it is there?

A. The testimony in this case,—that is my recollection of it.

Q. You refer to some testimony that was given by Mr. Thompson on cross examination, and not to the examination in chief, or the testimony of Mr. Honeywell?

A. That was my recollection as to the testimony; I couldn't say whether it was in chief or cross examination, but it was on that that I made the investigation, because I saw at a glance that the amount wasn't the correct amount of interest.

Q. Do the books of the Capital National Bank show that the collateral securities as such were listed in the discount register?

A. In many cases it will show. I suppose you have reference to—

Q. Whether when a principal note that is an asset of the bank is listed on the register was there any indication that it bears collateral security,—are the collateral securities also listed on the discount register?

A. I have never found any list of collateral securities what
1857 I mean—opposite the note on your discount register it shows in many cases whether it is by endorsement collateral,—if collateral it is simply the word "coll".

Q. And the discount register is used so far as you observed to record the paper which purports to be a primary asset of the bank?

A. Yes sir.

Q. So that it would not be proper in that register to record the primary asset and also the security; that would tend to greatly increase the colorable assets of the bank?

A. If they were charged in both instances, it would.

Q. And at that time it wasn't the general custom of banks, in keeping their records,

A. No sir. I should say if that was done it would be the exception, but I will say further it is easy to detect whether it is collateral, or one of the notes of the bank, because if it is one of the notes of the bank it bears the bills receivable number, and if it is collateral, it wouldn't.

Q. At least it couldn't bear any other number than the number of the primary note?

A. I don't get your meaning.

Q. That is if you had note number 5200 secured by collateral, the collateral could only bear the number 5200.

A. No sir, it never would bear a number like that.

Q. There was no system of registering collateral in any account in this bank, so far as you have discovered?

A. No sir, I have never discovered an account of that kind.

Mr. ROSE: That is all.

1858 Redirect examination.

By Mr. THOMAS:

Q. Mr. Jones, referring to this same transaction of the Gas company account, let me ask you this? If a transaction were as supposed in the interrogatory of counsel, that is, if the Gas Company had brought their note into the bank on the first day of May 1891 and asked the Capital National Bank to discount it at the Cadiz bank as a mere accommodation, would there have to be some entry on the books, and if so what would there be?

A. There would have to be a counter entry to take the place of the credit given to the Gas company.

Q. If the Gas company were credited with \$10,000 and the Cadiz bank were not charged with a like amount, how would that have to be carried in the bank in order to keep the books in balance, or the cash in balance?

A. It could only be done by a fraudulent entry of some kind.

Q. How could it be done?

A. The easiest way would be by a cash slip carried in the cash until something would take its place.

Q. You mean if \$10,000 was credited to the Gas company and they had taken a note to negotiate for them as an accommodation that they would have to carry a slip for \$10,000 as cash until they received returns from the Cadiz bank?

A. Yes sir, or in some other way. There must be some corresponding entry for the credit given to the Gas Company, or the books would be out of balance to the amount that they had credited the Gas company.

Q. The notes under the head of Stark & Mosher, or E. W. Mosher that were referred to in the schedule identified this morning—do you say those are entered as original notes or as collateral?

1859 Q. What do you mean then by the discrimination of collateral, that is when a note is entered on the register and is secured, by a notation it is marked "coll." as an abbreviation for collateral?

A. In some instances.

Q. Have you ever found anything more than that to indicate collateral for bills receivable in the bank?

A. As I stated I have never found any list of collaterals in the books that I have examined of the Capital National Bank.

Q. Now when you were on the stand before the noon recess you were asked something with reference to having made investigations as to bills receivable of Walter T. Scott that entered into the bank prior to 1887. Have you since then made any investigation of that kind?

A. A little. Just a few minutes that I had time before they called me in court.

Q. And did you find that any bills receivable of Mr. Scott entered the Capital National Bank?

A. Yes sir. I found record of several Scott notes prior to the date which he called my attention to.

Q. Prior to May 1887?

A. Yes sir.

Q. And you spoke this morning with reference to some real estate transaction. Do you know when it was that the real estate you spoke of which went to the bank ultimately when it was that that came to Mr. Scott?

1860 Q. You may state what you know about that.

A. I examined the records of Lancaster county and traced the notes and mortgages from Mr. Scott to the persons they were payable to and to the bank and one of them was assigned direct to the bank and the other was assigned to Mr. Richards and then to the bank.

Q. When did Mr. Scott first get a deed to this block in Kinney's addition?

A. The record shows that the Charles B. Pickrell deed to Walter Scott of an undivided one half interest in Block 24 Kinney's "O" street addition,—the date of the deed is July 5th, 1886; acknowledged the same day, and filed March 8th.

Q. What is the consideration recited?

A. \$5,000.

Q. Do you know when he bought the other undivided one half?

A. I do.

Q. When was that?

A. The date of the deed was February 11, 1888, and filed March 7th, 1888.

Q. What was the consideration?

A. \$5,500.

Mr. THOMAS: I wish to recall the witness.

1861 Q. Now Mr. Jones, when did you first meet Mr. Scott since the last trial, or since the failure of the Capital National Bank?

A. I met Mr. Scott a number of times, just to pass him on the street and pass the time of day, and so forth, but I suppose what you have reference to is in regard to this trial.

Q. Yes, that's what I mean.

A. That was, I should say, the early part of November.

Q. Of what year?

A. Of last year, 1910.

Q. Prior to that time had you ever talked with Mr. Scott anything concerning this case or of any evidence with reference to it?

A. I never was able to get him to talk in regard to it until this conversation.

Q. How long after that was it that Mr. Scott came to Seward?

A. Just a few days.

Q. Where did you meet him at that time?

A. On "O" street.

Q. In Lincoln?

A. Yes sir.

Q. Well had you had any pre-arranged meeting, or just met him casually?

A. No sir, it was an accidental meeting, and we passed the time of day and I went to talking to him about the Capital National Bank and made some statement in regard to some things that the books showed, knowing that he had been a bookkeeper in the Capital National Bank at one time.

1862 Mr. BISHOP: That has all been gone into.

A. —And it drifted along until I made some statement and he said he didn't think they would show that and I told him I thought they would.

A. And he said he didn't think the books would show that or he could remember it, or something of the kind, and if he could see the books—and I told him I had the books at Seward, and the result of the conversation was that he came to Seward.

Q. How did he happen to come to Seward, who arranged to have him come, and give the circumstances.

A. It was the outgrowth of that conversation; I made some statements of what—thought the books showed and he didn't think they did and I told him I had the books and he said he would like to see them, and I told him I would like to have him, and he came down in a few days,—I think two or three days after that.

Q. At that time, Mr. Jones, had you had any conversation with him or had he said anything to you with reference to the evidence that he gave at this trial?

A. No sir.

Q. When did you first know that he knew anything about the history of the Capital National Bank?

Q. Or the testimony that he gave here at the trial?

1863 A. It took place in this way—

Q. Can you give the circumstances?

A. Yes sir. He came to Seward and examined the books in that little room there (indicating) for some little time, he and I together and he went to telling about the bank in different ways and I called Mr. Thomas over and the three of us talked together and then it developed during that conversation that there was some cases on and he made the statement that if he had known that he never would have come down here, and I was going to say the testimony that he

gave was,—I don't know, brought out in the conversation just as between people referring to any subject they are talking about.

Q. What I want to get at is to tell the Court whether the matters that he testified to here was elicited by you or anyone else or just came out while he was telling the story of his life and the time he went to Lincoln, or Lancaster county, and his troubles and things of that kind?

A. It had to come from him because I knew nothing about his transactions and many things in the book or anything about it until he told of it and it was all news to me and I want to say that I was surprised at the amount of knowledge that he seemed to have in regard to the bank affairs.

1864 Q. Prior to the talk with Mr. Scott had you ever heard anything about any meeting of the board of directors to which he testified, or his transactions with Mr. Mosher in regard to getting these notes of his?

A. No sir, it was the first I ever heard of it.

Mr. THOMAS: That is all.

Recross-examination.

By Mr. ROSE:

Q. You and Mr. Whitmore were both in the room when Mr. Scott was there, weren't you?

A. Part of the time.

Q. And you had Scott come back again before this trial?

A. Yes sir.

Q. How many times had he been here before this trial?

A. Two or three times,—that is my recollection.

Q. So you pursued him a little, after the time of the first talk did you, to get him to come back again?

A. Yes sir.

Q. And you got him back here with Whitmore, didn't you—was Whitmore here the first time he was here?

A. I am inclined to think that he was.

Q. And you and Mr. Whitmore assisted him to look over the books and tried to get him to explain some entries didn't you?

A. To a certain extent, yes sir.

Q. But you couldn't get anything out of him about his conduct with the bank, could you?

A. Yes sir.

Q. Well you got so little out of him that you thought he
1865 was either a knave or a fool?

A. Oh no, I wouldn't put it that way.

Q. And didn't you say so among yourselves, that he was either a knave or a fool?

A. No sir.

Q. You considered among yourselves whether he was a knave or a fool?

A. No sir.

Q. All the circumstances of his conduct, from those books in-

dedicated to you that the fellow wasn't quite right somehow, didn't they?

A. No sir.

Q. Now when he was here testifying, you got a list of his notes, kind of a schedule of them, and gave it to him didn't you?

A. No sir.

Q. Took him into the room there and checked over dates before he testified?

A. In that little room?

Q. Yes sir.

A. Yes sir, he was in there.

Q. You took him in there and checked over the entries of his own notes, didn't you?

A. I remember that he brought some notes with him that I went in there with him and checked over those notes to see whether the paid stamp agreed with the date on which they were carried on the journal. The reason of that was that sometimes all the business of the bank doesn't appear on the books of the bank of that date; if the transaction occurred near the close of the day that transaction might be carried over for the following day.

Q. They would just keep them in suspense until the next day and enter it on the next day's business.

1866 A. Yes, sir.

By Mr. THOMAS:

Q. Mr. Jones, when Mr. Scott was here the first time did he have the old notes that he brought up later, that he had here at the trial?

A. Oh, no.

Q. They were brought up at a subsequent trip?

A. Yes sir.

Q. Now Mr. Jones, when Mr. Scott first told you about the details of his transactions with the Capital National Bank, when he bought the property and gave these notes and all the circumstances had you then examined the records either of the bank or anywhere else, or shown them to Mr. Scott or given him any information whatever as to when they occurred or what they were?

A. No sir. I want to change that answer in this respect: I did talk to him about his two \$6,500 notes, but that is the only thing that I had talked to him about.

Q. Had you at that time said anything to him, or did you then know anything whatever about his transactions preceding that with reference to having bought real estate and given mortgages, and conveyed real estate to the bank, or anything concerning anything that he testified to here?

A. No sir, I never knew anything of it until he told me about it here in the court house at Seward, Nebraska.

1867 By Mr. ROSE:

Q. I want to ask Mr. Jones one more question. Did you examine the records to see who conveyed to the city of Lincoln and whose deed recited the consideration?

A. I don't understand your question. Who conveyed what?

Q. Who conveyed portions of this property, lots seven and eight, in the city of Lincoln, for the engine house?

A. I don't know as I understand yet what you mean by that.

Q. This same block you have testified to, Block 24 Kinney's "O" street addition. Did Richard C. Outcalt convey lots seven and eight to the city of Lincoln?

A. I think that is right. I think Mr. Scott made a deed to the bank as security for what he was owing the bank, and later it was conveyed back and he gave a mortgage.

Q. Who deeded to the city of Lincoln, Outcalt?

A. That would be my impression.

Q. Who deeded to Crandall,—who executed the warranty deed to Crandall for \$7,000?

A. I couldn't say, Mr. Rose. I noticed there were two conveyances made out of this block, but I didn't make a memorandum of that because I thought it wasn't anything that concerned the Capital bank.

Q. It might show how this \$18,000 of indebtedness was reduced to \$13,000.

A. It might, but I didn't follow up those deeds.

Witness excused.

1868 Mr. DENNIS SAYLOR, called as a witness on behalf of the plaintiffs, and being first duly sworn, testified as follows, to-wit:

Direct examination.

By Mr. THOMAS:

Q. State your name.

A. J. H. Saylor.

Q. What official position,—are you the county clerk of Hamilton county at this time?

A. Yes sir.

Q. How long have you been county clerk of that county?

A. I was elected in the Fall of 1907.

Q. Have you with you and now in your possession any of the records of Hamilton County, Nebraska?

A. Yes sir.

Q. I hand you a book which purports to be Book of Registration of Hamilton County, and will ask you if that is one of the books and documents and records of your office as county clerk of Hamilton county?

A. Yes, sir, it is.

Q. And is it one of the books and records that is kept in the regular routine of your office?

A. Yes sir.

Q. You may state what sort of entries are made in that book, what it contains?

A. It contains the entries of mortgages and deeds and releases.

Q. And what does that book show in that regard?

A. It shows the name of the grantor and grantee.

Q. And character of instruments?

A. Character of instrument, and the date of filing, and the kind of instrument and the date of mailing out.

1869 Q. Does it show to whom delivered?

A. Yes sir.

Q. And the date delivered?

A. Yes sir.

Q. Now I will ask you to examine that book and see if you can point out to us if there were any deeds filed in the office of the county clerk,—first, I will ask you in whose handwriting that book was kept?

A. Mr. L. W. Shuman, county clerk at that time.

Q. You knew him to be county clerk at that time?

A. Yes sir.

Q. I will ask you to see if there were any deeds filed for record in the office of the county clerk of January 19, 1893?

A. Yes sir.

Q. You may give the description.

A. There is one deed here from the Capital National Bank to Charles W. Mosher, Quit Claim deed, recorded in deed record "Q," page 355.

A. The date of the filing was January 19th, 1893. After it was recorded it was mailed back to George Sanford, York, Nebraska.

1870 Q. On what date?

A. On February 7th, 1893.

Q. Do you find any more filed on that date?

A. On the same date, January 19th, 1893—

A. —two warranty deeds from Charles W. Mosher and others to the Capital National Bank, filed January 19th, 1893; mailed back February 17th, 1893, to George Sanford, York, Nebraska.

Q. Where were they recorded?

A. Recorded in deed record 11, page- 416 and '17.

Q. Was there any other deed filed that day?

A. Yes sir. Another warranty deed by Charles W. Mosher and wife to D. E. Thompson, recorded in deed record 11, page 418.

Q. To whom was that mailed?

1871 A. Mailed to George Sanford, York, Nebraska.

Q. Now I will ask you if the book I hand you now is the fee book of the office of county clerk of Hamilton county?

A. Yes sir.

Q. And does that show the current fees, and is it a book that is regularly kept and part of the documents and files of the office of county clerk?

A. Yes sir.

Q. And what is entered up on that book?

A. This book shows the fees paid for filing of certain instruments on the days that the filings were made.

Q. Does it give the date of payment?

A. It gives the date of payment.

Q. And from whom received?

A. And from whom received.

Q. And the nature of the instrument?

A. Yes sir.

Q. And the amount received?

A. Yes sir.

Q. Is that book kept in the handwriting of Mr. Shuman, who was the county clerk at that time?

A. Yes sir, it is.

Q. And is a part of the records and files of your office as county clerk?

A. Yes sir.

Q. And you have continued to use that book or a similar one?

A. A similar one.

Q. Now I will ask you if it appears on that book that any deeds were filed on the 19th day of January, 1893?

1872 A. Yes sir.

Q. Does it show that on that day four deeds were filed by George Sanford, for which he paid a fee of \$4.00?

A. Yes sir.

Q. Does the book show that any other deeds were filed that day, and if so how many?

A. One other deed, from the Nebraska Mortgage Company.

Q. And were there two instruments filed by that company that day?

A. Yes sir, one mortgage, and one deed.

Q. What was the total fee received from them that day?

A. The total fees were \$2.75.

Mr. THOMAS: I offer in evidence the following portion of the book identified by the witness as the record of the office of the county clerk of Hamilton county, Nebraska,—the entry I refer to being as follows,—under date of January 19, 1893, under the column "From whom received," George Sanford; under the column of "Cr. Amount" \$4.00; under the column "For what services" the words "4 deeds."

1873 Mr. THOMAS: Now I offer the following portions of the books identified by the witness as the Book of Registration, No. 2, for Hamilton County, Nebraska, the following line appearing on page 263:

Mr. Thomas reads: "Book of Registration, Hamilton county, Nebraska. Page 263.

Under the first column, "Grantor," Charles W. Mosher, et al.

Under the next column, "Grantee," Capital National Bk.

Under the next column, "Character of Instrument," "2 W. D's."

Under the next column, "Recorded" "Book" 11, "Page-" 416, 417.

"Date of Filing": "Month," Jan.; "Day," 19; "Year," 1893.

"Delivered" 2-17-93. "Mailed to Geo. Sanford, York, Neb."

Mr. THOMAS: I also offer the following line:

(Mr. Thomas reads:) Grantor, Charles W. Mosher and wife;

Grantee, D. E. Thompson; Character of instrument, W. D.; recorded, Book 11, page 418; Date of filing, January 19, 1893; Delivered, "do." "do."

Mr. THOMAS: Also the following on page 41:

1874 (Mr. Thomas reads:) The top line on page 41—Grantor, Capital National Bank; Grantee, Charles W. Mosher; Character of Instrument, Q. C. D.; Recorded, Book "Q," page 355; Date of filing, January 19, 1893; under the column "Delivered," 2/7/93, mailed to Geo. Sanford, York, Nebr.

Cross-examination.

By Mr. ROSE:

Q. Did you make any search and follow out these instruments that you find reference made to in this book?

A. No more than in making kind of an abstract.

Q. You did make an abstract?

A. Yes sir.

Q. What disposition did Mr. Thompson make, if any, of any property described in the deed in which he purports to have been grantee? Did he convey it by Quit Claim, or otherwise to somebody?

A. Which property do you have reference to?

Q. There is only one deed to Mr. Thompson; there was no description given there. Did you follow that out?

A. No sir.

Q. You don't know what disposition he made of it?

A. No sir.

Q. You don't know whether he acted on that, or claimed any rights under it, or took possession of the land?

A. No sir.

Q. Or quit claimed to the Receiver, or what if anything he ever did?

1875 A. No sir.

Q. You don't know anything about it?

A. Only what the records show?

Q. Do you know what the records show?

A. I couldn't state for sure what the records show now.

Mr. ROSE: That is all.

Redirect examination.

By Mr. THOMAS:

Q. Did you make a certificate to the paper I hand you now?

A. Yes sir.

Q. Under the seal of your office?

A. Yes sir.

Q. And did you prepare that from the records of your office?

A. Yes sir.

Exhibit "18-a" Identified.

Q. Is Exhibit "18-a" an abstract of certain conveyances that appear on the records of Hamilton county, Nebraska, in your office?

A. Yes sir.

Q. Was that made by you?

A. Yes sir.

Q. That is the one to which you have just testified and bears your signature and the seal of your office?

A. Yes sir.

Q. I call your attention to an instrument which purports to have been executed by D. E. Thompson and wife to Reuben C. Newman and Nancy V. Middleton, under date of March 29, 1893, and I will ask you if that describes the same property as the deed from Charles W. Mosher and wife to D. E. Thompson, which was filed for 1876 record in the office of the county clerk of Hamilton county, Nebraska, on January 19th, 1893?

A. Yes sir, it does.

Q. There was but one deed filed on January 19th, 1893, that purported to convey any real estate to Mr. Thompson?

A. Yes sir.

Q. And if that was the deed conveying the North east quarter of 12-12-5, if that was the deed containing that description that then was the same property conveyed by Mr. Thompson to Newman and Middleton?

A. Yes sir.

Q. Under date of March 29th, 1893?

A. Yes sir.

Mr. THOMAS: I want to offer the following portions of Exhibit "18-a," which is identified by the witness, under the seal of his office; we want to offer on page 4 of that exhibit the entries which I have marked as entries "A," "B," "C" and "D."

Mr. ROSE: Each of the defendants objects as incompetent, irrelevant and immaterial, not the best evidence and no foundation laid.

Objection overruled.

Each of the defendants excepts.

Entries offered received in evidence as follows:

(Entry A.)

Capital National Bank, by C. W. Mosher, Pres't,
to
Charles W. Mosher.

N. E. $\frac{1}{4}$ 12-12-5.

Quit Claim Deed. Cons., \$1.00.

Date, Jan. 18, 1893.

Ack. Jan. 18, 1893, before Hal C. Young, N. P., Lancaster Co.,
Neb. (Seal.) 1 wit.

Filed Jan. 19, 1893. Book Q, page 355.

(Entry B.)

Charles W. Mosher and Wife, Richard C. Outcalt and Wife
to
Capital National Bank.

N. E. $\frac{1}{4}$ 12-12-5.

Warranty Deed. Cons., \$1.00.

Date, Jan. 7, 1893.

Ack. Jan. 7, 1893, before Hal C. Young, N. P., Lancaster Co.,
Neb. (Seal.) 1 wit.

Filed Jan. 19, 1893. Book 11, page 416.

1877

(Entry C.)

Charles W. Mosher and Wife
to
D. E. Thompson.

N. E. $\frac{1}{4}$ 12-12-5.

Warranty Deed. Cons., \$4,000.00.

Date Jan. 18, 1893.

Ack. Jan. 18, 1893, before Hal C. Young, N. P., Lancaster Co.,
Neb. (Seal.) 1 wit.

Filed Jan. 19, 1893.

Book 11, page 418.

(Entry D.)

D. E. Thompson and Wife
to
Reuben C. Newman and Nancy V. Middleton.

N. E. $\frac{1}{4}$ 12-12-5.

Warranty Deed. Cons., \$2,400.00.

Date March 29, 1893.

Ack. March 17, 1893, before H. Mansfield, Jr., N. P. Lancaster Co.,
Neb. (Seal.) 1 wit.

Filed March 30, 1893.

Book 11, page 586.

1878 Exhibits "19-a" to "24-a" identified.
Mr. THOMAS: We offer in evidence Exhibits No. "19-a,"
"20-a," "21-a," "22-a," "23-a," "24-a," being certified copies of in-
struments.

Mr. ROSE: Each of the defendants objects to Exhibit "24-a" as

incompetent, irrelevant and immaterial, not binding upon anyone of the defendants; and to Exhibit "23-a" as incompetent, irrelevant and immaterial, and not binding upon anyone of the defendants, and to Exhibit "19-a" as incompetent, irrelevant and immaterial, and having no bearing upon any issue in this case; and to Exhibit "20-a" as incompetent, irrelevant and immaterial, and having no relevancy to any issue; to Exhibit "22-a" as incompetent, irrelevant and immaterial, and not relevant to any issue, and to Exhibit "21-a" as incompetent, irrelevant and immaterial, and having no bearing upon any issue.

Objections overruled.

Each of the defendants excepts.

Exhibits "19-a," "20-a," "21-a," "22-a," "23-a" and "24-a" received in evidence as follows:

(Copies on next succeeding pages.)

Witness excused.

Mr. THOMAS: That is our case.

1879

Warranty Deed.

D. E. Thompson & Wf.
to
Alexander M. Landon.

Filed for record and entered on numerical Index at 9:30 o'clock A. M. May 26th A. D. 1893. Fee \$1.00. W. H. Reader, County Clerk, By M. A. Hill, Deputy.

Know all men by these presents: That D. E. Thompson and Jeanette M. Thompson Husband and wife of the county of Lancaster and state of Nebraska for and in consideration of the sum of Twelve Thousand dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Alexander M. Landon of the county of York and state of Nebraska the following described Real Estate, situated in New York Twpt. in York County and State of Nebraska, to-wit: The south east quarter (S. E. $\frac{1}{4}$) and south half of the north east quarter (S. $\frac{1}{2}$ N. E. $\frac{1}{4}$) of section Nineteen (19) Town Eleven (11) North Range Two (2) West of the Sixth Principal Meridian York County, Nebraska.

Subject to real estate M'tg'e on said premises of \$4,200.00 and interest on same from and after May 1st 1893.

Subject also to taxes of 1893 and thereafter, and we do hereby covenant with the said Alexander M. Landon and his heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrance except as above stated, that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever, except as above stated.

And the said Jeannette M. Thompson hereby relinquishes all right, title and interest in and to the above described premises.

Signed this 9th day of May 1893.

D. E. THOMPSON.

JEANNETTE M. THOMPSON.

In presence of

W. E. PAINTER.

THE STATE OF NEBRASKA,

Lancaster County, ss:

On this 25th day of May A. D., 1893 before me, W. E. Painter, a Notary Public duly commissioned and qualified for and residing in said county, personally came D. E. Thompson and Jeannette M. Thompson, to me known to be the identical persons described in, and who executed the foregoing conveyance as grantors and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Seal the day and year last above written.

[W. E. Painter, Notarial Seal, Lancaster County, Nebraska.]

W. E. PAINTER,

Notary Public.

Register of Deeds' Certificate.

STATE OF NEBRASKA,

York County, ss:

I W. W. Feaster Register of Deeds within and for said County, hereby certify that the within and foregoing is a true and correct copy of a certain Warranty Deed executed by D. E. Thompson & Wf. to Alexander M. Landon filed for record in this office May 26th 1893 at 9:30 o'clock A. M. and recorded in Book 39 of Deeds at page 524 of the records of said county.

In witness whereof I have hereunto set my hand and affixed my official Seal this 14th day of February A. D. 1911.

[SEAL.]

W. W. FEASTER,

Register of Deeds.

Endorsed: Exhibit 19-a. Warranty deed from ——— to ———. The State of Nebraska, ——— County, ss. Entered on Numerical Index and filed for record in the office of — of said county the — day of — 190- at — o'clock — Minutes — M., and recorded in Book — of Deeds on Page —, ——— Register of Deeds. ——— Deputy. Republican, York, Neb.

1880

Warranty Deed.

David E. Thompson & Wife
to
K. K. Hayden, Receiver.

Filed for record and entered on Numerical index at 3:15 o'clock P. M. Nov. 16th A. D. 1895. Fee \$1.00. W. H. Reader, County Clerk, M. A. Hill, Deputy.

Know all men by these presents: That we David E. Thompson and Jeannette M. Thompson husband and wife of the county of Lancaster and state of Nebraska for and in consideration of the sum of One 00/100 dollars in hand paid, do hereby grant, bargain, sell, convey, and confirm unto K. K. Hayden Receiver of the Capital National Bank of Lincoln of the county of Lancaster and state of Nebraska the following described Real Estate, situated in Stewart Precinct in York County and State of — to-wit: The North West Quarter of Section Number Nineteen (19) in Township Number Twelve (12) North of Range Number One (1) West of the 6th Principal Meridian containing One hundred and sixty acres more or less subject to all encumbrances, and we do hereby covenant with the said K. K. Hayden, Receiver & C and his successors and assigns, that we are lawfully seized of said premises; that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever, by through or under us.

And the said Jeannette M. Thompson hereby relinquishes all right of dower in and to the above described premises.

Signed this 12th day of November A. D. 1895.

DAVID E. THOMPSON.
JEANNETTE M. THOMPSON.

In presence of
C. P. MULLEN.

THE STATE OF NEBRASKA,
Lancaster County, ss:

On this 12th day of November A. D. 1895 before me, J. K. Honeywell a Notary Public duly commissioned and qualified for and residing in said county, personally came David E. Thompson and Jeannette M. Thompson to me known to be the identical persons described in, and who executed the foregoing conveyance as grantors and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

[J. K. Honeywell, Notarial Seal, Lancaster County, Nebraska.]

J. K. HONEYWELL,
Notary Public.

Commission expires April 22, 1901.

Register of Deeds' Certificate.

STATE OF NEBRASKA,
York County, ss:

I, W. W. Feaster, Register of Deeds within and for said County, hereby certify that the within and foregoing is a true and correct copy of a certain Warranty Deed executed by David E. Thompson and Wife to K. K. Hayeden, Receiver of the Capital National Bank of Lincoln filed for record in this office Nov. 16, 1895 at 3:15 o'clock P. M. and recorded in Book 43 of Deeds at page 122, of the records of said County.

In witness whereof I have hereunto set my hand and affixed my official seal this 14 day of February A. D. 1911.

[SEAL.]

W. W. FEASTER,
Register of Deeds.

Endorsed: Exhibit 20-a. Warranty Deed. From ——— to ———. State of Nebraska, ——— County, ss. Entered on Numerical Index and filed for record in the office of — of said county the — day of — 190—, at o'clock, — Minutes — M., and recorded in Book — of Deeds on Page —. ——— Register of Deeds. ——— Deputy. Republican, York, Neb.

1881

Warranty Deed.

Charles W. Mosher and Wife
to
D. E. Thompson.

Filed for record and entered on municipal Index at 3:40 o'clock P. M., Jan. 19th A. D. 1893. Fee \$1.00. W. H. Reader, County Clerk, By M. A. Hill, Deputy.

Know all men by these presents: That Charles W. Mosher and Louise P. Mosher his wife of the county of Lancaster and state of Nebraska for and in consideration of the sum of Four Thousand Dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto D. E. Thompson of the county of Lancaster and state of Nebraska the following described Real Estate, situated in York in Nebraska County and State of Nebraska, to-wit: North West Quarter (N. W. ¼) Section Nineteen Township Twelve Range One West 6 P. M. Subject to record Liens and we do hereby covenant with the said D. E. Thompson and his heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrance, that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Louise P. Mosher hereby relinquishes all Her Right of Dower in and to the above described premises.
Signed this 18th day of January A. D. 1893.

CHARLES W. MOSHER.
LOUISE P. MOSHER.

In Presence of
HAL C. YOUNG.

THE STATE OF NEBRASKA,
Lancaster County, ss:

On this 18th day of January A. D. 1893 before me, Hal C. Young a Notary Public duly commissioned and qualified for and residing in said county, personally came Charles W. Mosher & Louise P. Mosher his wife to me known to be the identical persons described in, and who executed the foregoing conveyance as grantor and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Seal the day and year last above written.

[Hal C. Young, Notarial Seal, Lancaster County, Nebraska.]

HAL C. YOUNG,
Notary Public.

Register of Deeds' Certificate.

STATE OF NEBRASKA,
York County, ss:

I, W. W. Feaster, Register of Deeds within and for said County, hereby certify that the within and foregoing is a true and correct copy of a certain Warranty Deed executed by Charles W. Mosher and Wife to D. E. Thompson filed for record in this office Jan. 19th 1893 at 3:40 o'clock P. M. and recorded in Book 39 of Deeds at page 215, of the records of said County.

In witness whereof I have hereunto set my hand and affixed my official seal this 14th day of February A. D. 1911.

[SEAL.]

W. W. FEASTER,
Register of Deeds.

Endorsed: Exhibit 21-a. Warranty Deed. From ——— to ———. The State of Nebraska, ——— County, ss. Entered on Numerical Index and filed for record in the office of — of said county the — day of — 190—, at — o'clock — Minutes — M., and recorded in Book — of Deeds on Page —. ——— Register of Deeds. ——— Deputy. Republican, York, Neb.

1882

Warranty Deed.

Charles W. Mosher & Wf. and Richard C. Outcalt & Wf.
to
D. E. Thompson.

Filed for record and entered on Numerical Index at 2:30 o'clock P. M., Jan. 11th, A. D. 1893. Fee \$1.00. W. H. Reader, County Clerk, By M. A. Hill, Deputy.

Know all men by these presents: That Charles W. Mosher & Louise P. Mosher his wife Richard C. Outcalt & Sarah C. Outcalt his wife of the county of Lancaster and state of Nebraska for and in consideration of the sum of sixteen Thousand Dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto D. E. Thompson of the County of Lancaster and state of Nebraska the following described Real Estate, situated in York, County and State of Nebraska, to-wit: South East One Quarter (S. E. $\frac{1}{4}$) and the south one half of the North East Quarter (S. $\frac{1}{2}$ of the N. E. $\frac{1}{4}$) of Section Number Nineteen (19) Township Number (11) Eleven Range Two (2) West of the 6th P. M., Subject to recorded liens. Also the South West Quarter (S. W. $\frac{1}{4}$) of Section Thirteen (13) Township Twelve (12) Range two (2) and we do hereby covenant with the said D. E. Thompson and his heirs and assigns, that we — lawfully seized of said premises; that they are free from incumbrance, that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Louise P. Mosher and Sarah C. Outcalt hereby relinquish all their right of dower in and to the above described premises.

Signed this 28th day of December A. D. 1892.

CHARLES W. MOSHER.
LOUISE P. MOSHER.
RICHARD C. OUTCALT.
SARAH C. OUTCALT.

In Presence of
HAL C. YOUNG.

THE STATE OF NEBRASKA,
Lancaster County, ss:

On the 28th day of December A. D., 1892 before me, Hal C. Young a Notary Public duly commissioned and qualified for and residing in said county, personally came Charles W. Mosher & Louise P. Mosher his wife and Richard C. Outcalt & Sarah C. Outcalt his wife to me known to be the identical persons described in, and who executed the foregoing conveyance as grantors and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Seal the day and year last above written.
[Hal C. Young, Notorial Seal, Lancaster County, Nebraska.]

HAL C. YOUNG,
Notary Public.

Register of Deeds' Certificate.

STATE OF NEBRASKA,
York County, ss:

I, W. W. Feaster Register of Deeds within and for said County, hereby certify that the within and foregoing is a true and correct copy of a certain Warranty Deed executed by Charles W. Mosher and Wife and Richard C. Outcalt and Wife To D. E. Thompson filed for record in this office January 11th A. D. 1893 at 2.30 P. M. and recorded in Book 39 of Deeds at page 191 of the records of said County.

In witness whereof I have hereunto set my hand and affixed my official Seal this 14th day of February A. D. 1911.

[SEAL.]

W. W. FEASTER,
Register of Deeds.

Endorsed: Exhibit 22-a. Warranty Deed. From ——— to ———. The State of Nebraska ———, County, ss. Entered on Numerical Index and filed for record in the office of — of said county the — day of — 190—, at — o'clock, — Minutes — M., and recorded in Book — of Deeds on Page —. ——— Register of Deeds. ——— Deputy. Republican, York, Neb.

1883

Warranty Deed.

Edwin W. Mosher and Wife
to
Chas. W. Mosher and Richard C. Outcalt.

Filed for record and entered on numerical index at 9:25 o'clock A. M. Dec. 18th, A. D. 1892. W. H. Reader, County Clerk, By M. A. Hill, Deputy.

Know all men by these presents: That Edwin W. Mosher and Minnie M. Mosher Husband & Wife of the county of York and state of Nebraska for and in consideration of the sum of Eight Thousand 00/100 Dollars in hand paid, do hereby grant, bargain, sell, convey and confirm unto Chas. W. Mosher & Richard C. Outcalt of the county of Lancaster and state of Nebraska the following described Real Estate, situated in — in York County and State of Nebraska to-wit: South East One Quarter (S. E. $\frac{1}{4}$) and the South one half of the North East Quarter (S. $\frac{1}{2}$ of N. E. $\frac{1}{4}$) of section number Nineteen (19) Township number Eleven (11) Range two (2) west of 6th P. M.

Subject to recorded liens, and we do hereby covenant with the said Chas. W. Mosher & Richard C. Outcalt and their heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrance except as above stated that we have good right and lawful authority to sell the same; and we do hereby covenant to warrant and defend the title to said premises against the lawful claims of all persons whomsoever.

And the said Minnie M. Mosher hereby relinquishes all her right & dower in and to the above described premises.

Signed this 16th day of Sept. A. D. 1892.

EDWARD W. MOSHER.
MINNIE M. MOSHER.

In Presence of—
GEO. SANFORD.

THE STATE OF NEBRASKA,
York County, ss:

On the 16 day of September A. D. 1892 before me, A. S. Harlan a Notary Public duly commissioned and qualified for and residing in said county, personally came Edwin W. Mosher and Minnie M. Mosher to me known to be the identical person described in, and who executed the foregoing conveyance as grantors and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Notary Public the day and year last above written.

[A. S. Harlan, Notarial Seal, York County, Nebraska.]

A. S. HARLAN,
Notary Public.

Register of Deeds' Certificate.

STATE OF NEBRASKA,
York County, ss:

I, W. W. Feaster Register of Deeds within and for said County hereby certify that the within and foregoing is a true and correct copy of a certain warranty Deed executed by Edwin W. Mosher and Wife to Chas. W. Mosher and Richard C. Outcalt, filed for record in this office December 16th A. D. 1892 at 9:25 o'clock and recorded in Book 39 of Deeds at page 143 of the records of York County.

In witness whereof I have hereunto set my hand and affixed my official seal this 14th day of February A. D. 1911.

[SEAL.]

W. W. FREASTER,
Register of Deeds.

Endorsed: Exhibit 23-a. Warranty Deed. From ——— to ———. The State of Nebraska, ——— County, ss. Entered on Numerical Index and filed for record in the office of — of said county the — day of —, 190—, at — o'clock — Minutes —. M. and recorded in Book — of Deeds on page —. ———, Register of Deeds ———, Deputy. Republican, York, Neb.

1884

Quit-Claim Deed.

Capital National Bank

Charles W. Mosher.

Filed for record Jan. 19th, 1893, at 3:40 P. M. Fee 1.00. W. H. Reader, Co. Cl'k.

This indenture, Made this 18th day of January in the year one thousand eight hundred and ninety three between Capital National Bank of Lincoln of the first part, and Charles W. Mosher of the second part.

Witnesseth, That the said part of the first part, in consideration of the sum of One Dollars, to them duly paid, the receipt whereof is hereby acknowledged have remised, released and quit claimed, and by these presents do, for themselves, heirs executors and administrators remise, release, and forever quit-claim and convey unto the said party of the second part, and to his heirs and assigns forever, all their right, title, interest, estate, claim, and demand both at law and in equity, of, in, and to all Northwest quarter (N. W. $\frac{1}{4}$) Section Nineteen (19) Township Twelve (12) Rang Range One (1) west 6 P. M. situated in York County, Nebraska. Together with all and singular the hereditaments and appurtenances thereunto belonging. To have and to hold the above described premises unto the said Charles W. Mosher his heirs, and assigns, so that neither the said Capital National Bank or any person in its name and behalf, shall, or will hereafter, claim or demand any right or title to said premises or any part thereof; but they and every one of them shall by these presents be excluded and forever barred.

In Witness whereof, the said party of the first part have thereunto set their hand and seal the day and year first above written.

[Seal Capital National Bank, Lincoln, Nebraska.]

CAPITAL NATIONAL BANK,

By C. W. MOSHER, *President*.

Signed, sealed and delivered in presence of—

HAL C. YOUNG.

* * * * *

THE STATE OF NEBRASKA,

Lancaster County, ss:

On this 18th day of January A. D. 1893 before me Hal C. Young, a Notary Public duly appointed and qualified for and residing in said county, personally came C. W. Mosher, Pres't. of Capital National Bank to me known to be the identical person described in and who executed the foregoing conveyance as grantor and acknowledged said instrument to be their voluntary act and deed.

Witness my hand and Notarial Seal the day and year last above written.

[Hal C. Young, Notorial Seal, Lancaster County, Nebraska.]

HAL C. YOUNG,
Notary Public.

Register of Deeds' Certificate.

STATE OF NEBRASKA,
York County, ss:

I, W. W. Feaster Register of Deeds within and for said County hereby certify that the within and foregoing is a true and correct copy of a certain Quit Claim Deed executed by Capital National — to Charles W. Mosher filed for record in this office Jan. 19th, 1893 at 3:40 o'clock P. M. and recorded in Book 35 of Deeds at page 332 of the records of said county.

In witness whereof I have hereunto set my hand and affixed my official seal this 14th day of February, 1911.

[SEAL.]

W. W. FEASTER,
Register of Deeds.

Endorsed: Exhibit 24-a. Quit-Claim Deed. From ——— to ———. The State of Nebraska, ——— County, ss. Entered in Numerical Index and filed for record in the Clerk's office of said county, the — day of —, 19—, at — o'clock and — minutes —. M., and recorded in Book — of Deeds on Page —, ———, County Clerk. ——— Deputy. York Blank Book Co., York.

1885 Mr. D. E. THOMPSON recalled.

Direct examination.

By Mr. ROSE:

Q. Was Mr. Dorgan employed by you in any capacity whatever or authorized to represent you in any capacity whatever in the month of January 1893?

A. No sir, then nor no other time.

Q. He never was employed by you as agent in any capacity of any sort?

A. No sir.

Q. Did you have any knowledge prior to yesterday that it was even claimed that he had pretended to file any instruments in your behalf in Lancaster county, Nebraska?

A. I never heard of it before.

Q. Do you speak or read the German language, Mr. Thompson?

A. No sir.

Cross-examination.

By Mr. THOMAS:

Q. You were a party to the suit in which the Farmers'

& Merchants' Bank of Galva, Illinois was plaintiff and you and others were defendants, in Lancaster county, being the record about which we had some controversy in this case?

A. I think so; there were so many of them down there that it would be hard for me to differentiate.

Q. Wasn't Mr. Wood, the county clerk of Lancaster County called as a witness in that case?

A. I couldn't say as to that, I don't know.

Q. And in that case didn't he testify that on the morning of January 23, 1893, very early in the morning Mr. Mullen brought this Mosher chattel mortgage to the office for record, that is 1886 testified to in this case?

A. I couldn't say.

Q. And that in about half an hour afterwards Mr. Dorgan brought an exact duplicate of that chattel mortgage, with the exception that the date wasn't filled in?

A. Well I didn't hear a word of that testimony, so far as I remember; I have no recollection of anything of that sort.

By Mr. ROSE:

Q. Did you have any pre-arrangement of any sort with Mr. Mosher whereby he should secure his trust—this trust for your daughter—by this chattel mortgage before you went to Terre Haute?

A. No sir.

Q. In some of the deeds last offered in evidence, or some of the documentary proofs of some character, there appeared to be involved the North east quarter of 12 — 12 — 5 in Hamilton county, which purports to have been deed- first by the Capital National Bank to Charles W. Mosher, and by Mosher and wife to you. You may state what, if any, knowledge at the time of that transaction you had that that land or any other lands that were conveyed to you through Mosher or Outcalt were, or had been the property of the Capital National Bank?

A. I had no knowledge whatever. I had utter faith in Mosher throughout this whole transaction; had I not done so I certainly wouldn't have given up my gas stock that was ample security and right in hand, for all the trouble this thing has brought upon me.

1887-1900 Q. Now if at the time of those conveyances, even in December 1892, or January 1893, you had known that Mosher got title through the Capital National Bank would you have on that account felt any reason to question the integrity of the transaction?

A. No. I couldn't have questioned it, for I would have felt very certain that he had taken it under his right; I wouldn't have expected him to have taken anything that did not belong to him.

Witness excused.

End of testimony.

1901 In the Supreme Court of the United States.

Oct. Term, 1914, No. 501.

File No. 24240.

JONES NATIONAL BANK, Plaintiff in Error.

vs.

CHARLES E. YATES et al., Defendants in Error.

Oct. Term, 1914, No. 502.

File No. 24241.

BANK OF STAPLEHURST, Plaintiff in Error.

vs.

CHARLES E. YATES et al., Defendants in Error.

Oct. Term, 1914, No. 503.

File No. 24242.

UTICA BANK, Plaintiff in Error.

vs.

CHARLES E. YATES et al., Defendants in Error.

Oct. Term, 1914, No. 504.

File No. 24243.

THOMAS BAILEY, Plaintiff in Error.

vs.

CHARLES E. YATES et al., Defendants in Error.

The plaintiffs in error in the above entitled cases severally request the Clerk of the United States Supreme Court to print the following designated portions of the Bill of Exceptions in the above entitled cases, numbered, File Nos. 24240, 24241, 24242, and 24243, which they think necessary for the consideration of the errors upon which they intend to rely, to-wit: (there being no assignments of error on account of the offer and rejection or admission of testimony all objections and exceptions to testimony in the bill of exceptions & rulings thereon are to be omitted from the printed record):

1902 1. Bill of Ex. p. 1: title, appearances and certificate of the Clerk of the District Court.

2. Bill of Ex. pp. 13 to 14; stipulation.

3. Bill of Ex. p. 15; first four lines at top of page.

4. Bill of Ex. p. 16 of the testimony of Mr. McDonald; the first second and third questions and answers.

5. Bill of Ex. p. 16; remainder of page 16 to page 45, inclusive omit in the printing.
6. Bill of Ex. p. 46, commencing at top of page and ending immediately before the words: "cross-examination" on page 53, inclusive.
7. Bill of Ex. p. 58 commencing with Exhibit "A1" and ending at the bottom of p. 60, inclusive.
8. Bill of Ex. p. 61; deposition of J. E. Hill, commencing at top of page and ending at bottom of page 71, inclusive.
9. Bill of Ex. p. 77; offer in evidence of Exhibits "A, B, C, D, E, F, G, H, I and J, inclusive.
10. Bill of Ex. p. 83 deposition of D. J. Carnes, commencing with top of page and ending near the bottom of page 88 with the words: "a good many thousands of dollars."
11. Bill of Ex. p. 91; commencing with the second question from the bottom of the page and ending with the signature of the witness on page 93.
12. Bill of Ex. p. 94; deposition of P. M. Alden, commencing at top of page and ending with the signature of witness on page 102.
13. Bill of Ex. p. 114; deposition of John W. McDonald, commencing with last question at bottom of page and ending with the first answer "yes" at the top of page 130.
14. Bill of Ex. p. 133; commencing with second question at top of page and ending at bottom of the same page.
15. Bill of Ex. p. 134; commencing at top of page and 1903 ending with the words: "free of expense."
16. Bill of Ex. p. 135; commencing with the second question and ending with the last answer "yes" on second line from bottom of page.
17. Bill of Ex. p. 142; commencing at the top and ending with the last answer "yes sir."
18. Bill of Ex. p. 146; commencing with the words: "by Mr. Thomas" and ending at the bottom of page 155, inclusive.
19. Bill of Ex. p. 167; commencing with the last question near bottom of page and ending at the bottom of page 168.
20. Bill of Ex. p. 169; commencing at the top of page and ending with the third answer "no" near the top of the page 172, inclusive.
21. Bill of Ex. p. 175; commencing with the second question near top of page and ending with the third answer "no" near center of page 176.
22. Bill of Ex. p. 177; commencing with the third question near top of page and ending with the second answer "no" in third line at top of page 179.
23. Bill of Ex. p. 186; commencing with the last question identifying Exhibits from 109 to 146 and ending at bottom of page.
24. Bill of Ex. p. 187 to 205, inclusive, including Exhibits "X109" to "X146" inclusive, may be omitted. See par. #149 hereof.
25. Bill of Ex. p. 206; the words "Exhibits 109 to 146 inc. received in evidence."

26. Bill of Ex. p. 218; commencing with second question and ending at bottom of page 219.

27. Bill of Ex. p. 222; testimony of Hal Young, omit in the printing.

28. Bill of Ex. p. 254; the first five lines at top of page offering deposition of Richard C. Outcalt.

29. Bill of Ex. p. 273; commencing with the words: "plaintiffs now offer in evidence" and ending with the 3d answer "yes" immediately preceding the cross-examination, on page 274.

1904 30. Bill of Ex. p. 278; commencing with "deposition of Luther P. Ludden" and ending on page 279 with the answer: "C. W. Mosher a member of the commission and treasurer."

31. Bill of Ex. p. 280; commencing with the last question and ending with the last answer near the bottom of the page 282.

32. Bill of Ex. p. 287; testimony of S. K. Hale, commencing at the top of p. 287 and ending at the bottom of p. 297.

33. Bill of Ex. p. 300; commencing with the 4th question and ending with the answer: "they could not" near the center of p. 301.

34. Bill of Ex. p. 321; commencing with the second question near center of page and ending at the bottom of the same page.

35. Bill of Ex. p. 336; testimony of A. E. Harvey may be omitted in printing.

36. Bill of Ex. p. 352; testimony of Leonidas M. Lawson, commencing at top of page and ending at bottom of p. 363.

37. Bill of Ex. p. 364; testimony of William Ayers Jr., commencing at top of page and ending at bottom of page 365.

38. Bill of Ex. p. 376; commencing with last question at bottom of page and ending with the second answer on p. 377.

39. Bill of Ex. p. 381; print the first question and answer, commencing with the words: "and why is there not some identification."

40. Bill of Ex. p. 392; testimony of Derwent Bigelow may be omitted from the printing.

41. Bill of Ex. p. 399; testimony of Augustus D. Lynch, commencing with top of page and ending at bottom of page 409 including Exhibits "942, 943, 944, 960 and 961."

42. Bill of Ex. p. 419; Exhibit 972.

43. Bill of Ex. p. 432; commencing at top of page and ending at bottom of p. 433 being exhibit 975.

44. Bill of Ex. p. 435; commencing at top of page and ending at bottom of p. 443 including exhibits 945, 946, 947, 948, omitting certificates of Comptroller.

45. Bill of Ex. p. 444; testimony of L. H. Morse, commencing at top of page and ending at bottom of p. 446.

1905 46. Bill of Ex. p. 448; print all of page being Exhibit 978.

47. Bill of Ex. p. 450; print all of page being Exhibit 979.

48. Bill of Ex. p. 452; print all of page being Exhibit 980.

49. Bill of Ex. p. 453; commencing at top of page and ending with the words: "Acc'ts solicited, bankers and merchants"—including Exhibit 981.

50. Bill of Ex. p. 455; print all of page being Exhibit 982.
51. Bill of Ex. p. 457; print all of page being Exhibit 983.
52. Bill of Ex. p. 459; print all of page being Exhibit 984.
53. Bill of Ex. p. 461; print all of page being Exhibit 985.
54. Bill of Ex. p. 463; print all of page being Exhibit 986.
55. Bill of Ex. p. 465; print all of page being Ex. 987.
56. Bill of Ex. p. 467; print all of page being Exhibit 988.
57. Bill of Ex. p. 472; commencing with the words: "Mr. F. S. Johnson near top of page and ending with the last answer on p. 473.
58. Bill of Ex. p. 474; commencing with the word "George W. Post" at the top of page and ending near the center of page 476 with the answer "He was insolvent" being the end of the direct examination.
59. Bill of Ex. p. 478; commencing with the words: "Mr. A. L. Clark" at the top of page and ending at the bottom of p. 479.
60. Bill of Ex. p. 480; testimony of I. E. Baker may be omitted in the printing.
61. Bill of Ex. p. 503; testimony of G. W. Shreck, commencing at top of page and ending on p. 506.
62. Bill of Ex. p. 507; testimony of Edward Hurlbut, Jr., commencing at top of page and ending at bottom of page 509.
63. Bill of Ex. p. 522; commencing with the last question at bottom of page and ending near bottom of p. 523 immediately preceding the word: "redirect examination."
- 1906 64. Bill of Ex. p. 525; commencing with redirect examination and ending at bottom of page.
65. Bill of Ex. p. 526; testimony of C. W. Hamilton may be omitted in the printing.
66. Bill of Ex. p. 537; testimony of H. J. Whitmore, commencing at top of page and ending at bottom of p. 543, omitting of course objections of counsel and motions to strike testimony & omitting last two questions.
67. Bill of Ex. p. 545; commencing with 2nd question at top of page and ending at bottom of p. 547.
68. Bill of Ex. p. 548; commencing with the last question near bottom of page with the words: "now, Mr. Whitmore" and ending with the third answer on p. 553—with the words: "in these two accounts."
69. Bill of Ex. p. 555; commencing with the 3d question from the bottom with the words: "And how was the transfer made" and ending with the first answer at top of p. 559 with the words "that balances the account."
70. Bill of Ex. p. 560; commencing with the second question near top of page with the words "now I will ask you to state" and ending with the bottom of p. 573 except the last question and answer on that page.
71. Bill of Ex. p. 576; commencing at top of page and ending at bottom of page 577.
72. Bill of Ex. p. 581; testimony of H. T. Jones may be omitted from the printing.

73. Bill of Ex. p. 588; testimony of H. J. Whitmore, commencing at top of page and ending at the bottom of p. 595 except the last question and answer.

74. Bill of Ex. p. 596; commencing with 3rd question 1907 from the bottom with the words: "well now have you found" etc. and ending at the bottom of the page.

75. Bill of Ex. p. 600; commencing with the words: "By Mr. Thomas" and ending at bottom of p. 618.

76. Bill of Ex. p. 624; commencing with the 3d question from the bottom with the words: "have you examined the books" and ending with the second answer on page 630 with the words: "they made those two books agree".

77. Bill of Ex. p. 631; commencing with the words: "by the court" and ending at the bottom of page 632 except the last question.

78. Bill of Ex. p. 639; commencing with the words: "by Mr. Thomas" and ending at the bottom of the page omitting the last question.

79. Bill of Ex. p. 641; commencing at top of page and ending at the bottom of page 652, omitting the last two questions and one answer.

80. Bill of Ex. p. 654; commencing at the top of page and ending at the bottom of page 655 omitting the last answer.

81. Bill of Ex. p. 658; commencing with first question and ending at bottom of page 660.

82. Bill of Ex. p. 663; all of page being Exhibit "hh".

83. Bill of Ex. p. 663; all of page being Exhibit "II".

84. Bill of Ex. p. 670; all of page being Exhibit "JJ".

85. Bill of Ex. p. 672; all of page being Exhibit "kk".

86. Bill of Ex. p. 675; all of page being Exhibit "LL".

87. Bill of Ex. p. 678; all of page being Exhibit "MM".

88. Bill of Ex. p. 681; all of page being Exhibit "NN".

89. Bill of Ex. p. 682; all of page being Exhibit "1039".

90. Bill of Ex. p. 683; commencing at top of page and ending at bottom of p. 690.

1908 91. Bill of Ex. p. 693; Exhibit "X1044" entire page.

92. Bill of Ex. p. 700; commencing with last question at bottom of page and ending at bottom of p. 701.

93. Bill of Ex. p. 703; commencing at top of page and ending at bottom of page 704—being exhibit "X-1043".

94. Bill of Ex. p. 706; Exhibit 1047, commencing at top of page and ending at bottom of page 707.

95. Bill of Ex. p. 709; commencing at top of page and ending at bottom of page 713.

96. Bill of Ex. p. 715; commencing at top of page and ending at bottom of page 717.

97. Bill of Ex. p. 725; commencing at top of page and ending at bottom of page 727 including the schedule of Exhibit No. 147 to 92314.

98. Bill of Ex. p. 728; testimony of H. T. Jones commencing at top of page and ending at bottom of page 791.

99. Bill of Ex. p. 802; commencing with first question near top of page and ending with the first answer at top of page 804 "It did".

100. Bill of Ex. p. 822; commencing with the first question and second line and ending at bottom of page 837.

101. Bill of Ex. p. 842; commencing at top of page and ending with the 4th answer "no sir" near center of page 864.

102. Bill of Ex. p. 967; commencing at top of page and ending with the first answer at top of page 968 with the words: "what do you say Mr. Rose".

103. Bill of Ex. — 975; commencing with the last question at the bottom of page and ending with the first answer near top of page 978 with the words: "time of the over-draft".

104. Bill of Ex. p. 980; testimony of H. J. Whitmore, commencing at top of the page and ending with the answer "nothing on the following day" near the middle of the page 988.

105. Bill of Ex. p. 1001; Exhibit "AF" all of page.

106. Bill of Ex. p. 1024; commencing with second question at top of page and ending at bottom of page 1029.

107. Bill of Ex. p. 1031; commencing at top of page and ending at bottom of page 1032 including exhibit "AG."

108. Bill of Ex. p. 1038; commencing with the words: "Mr. Thomas; I want to offer in evidence" and ending at bottom of page 1062—omitting the two proxies on page 1061.

109. Bill of Ex. p. 1091; commencing with the words "Q. I will ask you if you have made" and ending at bottom of page 1096, including exhibits "AJ," "1074 and 1075".

110. Bill of Ex. p. 1097; testimony of Walter T. Scott, commencing at top of page and ending at bottom of page 1135.

111. Bill of Ex. p. 1137; testimony of H. T. Jones, commencing at top of page and ending at bottom of page 1160.

112. Bill of Ex. p. 1178; testimony of Fritz Beckord and ending at bottom of page 1193.

113. Bill of Ex. p. 1194; testimony of E. Jacobs, commencing at top of page and ending at bottom of page 1198.

114. Bill of Ex. p. 1199; testimony of J. J. Thomas may be omitted in the printing.

115. Bill of Ex. p. 1204; testimony of E. Jacobs commencing at top of page and ending at bottom of page 1219.

116. Bill of Ex. p. 1221; testimony of Thomas Bailey, commencing at top of page and ending at bottom of page 1229.

117. Bill of Ex. p. 1243; commencing with the words "redirect examination and ending with the words: "witness excused" near the bottom of p. 1245.

1910 118. Bill of Ex. p. 1246; testimony of Mrs. Hamer, omitted in the printing.

119. Bill of Ex. p. 1234; testimony of R. Dorgan commencing at top of page and ending at bottom of page 1268.

120. Bill of Ex. p. 1239; testimony of George Sanford, commencing at top of page and ending at bottom of page 1276.

121. Bill of Ex. p. 1277, testimony of D. E. Thomas commencing at page 1277 and ending at bottom of page 1376.

122. Bill of Ex. p. 1378, testimony of D. E. Thompson, commencing at page 1378 and ending at bottom of page 1452.

123. Bill of Ex. p. 1453; testimony of J. K. Honeywill, commencing at page 1453 and ending at bottom of p. 1471.

124. Bill of Ex. p. 1472; testimony of E. B. Stephenson may be omitted in the printing.

125. Bill of Ex. p. 1482; testimony of C. E. Yates, commencing at top of page and ending at bottom of page 1513.

126. Bill of Ex. p. 1517; commencing at top of page and ending at bottom of page 1544.

127. Bill of Ex. p. 1551; cross-examination of George Sanford commencing at top of page and ending at bottom of page 1553.

128. Bill of Ex. p. 1554; cross-examination of Mr. Dorgan, commencing at top of page and ending at bottom of page 1558.

129. Bill of Ex. p. 1559; cross-examination of Mrs. Hamer may be omitted in printing.

130. Bill of Ex. p. 1563; testimony of Ellis P. Hamer, commencing with the words: "Ellis P. Hamer being called on behalf of" and ending at bottom of p. 1580.

140. Bill of Ex. p. 1581; commencing at top of page and ending at bottom of page 1585.

1911 132. Bill of Ex. p. 1586; print the first three lines.

133. Bill of Ex. p. 1596; commencing with the second question from the bottom of the page with the words: "now you say you attended meetings" and ending with the second answer at top of page 1599: "I surely have no recollection of it".

134. The testimony of Sister Ida at page 1601, W. H. Mendenhall, commencing at page 1603, Mrs. R. A. White, commencing at page 1609, W. A. Sellick, commencing at page 1616, H. B. Miller, commencing at page 1624, William C. Rhode, page 1632, Fred Foster, page 1635 and Claude Wilson at page 1637 ending at page 1640 may be omitted in the printing.

135. Bill of Ex. p. 1642; commencing at top of page and ending at bottom of page 1650.

136. Bill of Ex. p. 1651; testimony of Major J. D. Woods, commencing at top of page and ending at bottom of page 1656.

137. Bill of Ex. p. 1661; testimony of J. F. Bookstrom, commencing at p. 1651; E. Hallet, commencing at p. 1665; Richard H. Corner, commencing at p. 1667; Frank Rawlings, commencing at p. 1669; Lawrence Fossler, commencing at p. 1673; Lew Franklin at p. 1677 and Otto Newberg, commencing at p. 1683 was offered to rebut the testimony of defendant's witnesses named in paragraph No. 134 hereof and designated as not to be printed. However should defendants in error request the testimony of their witnesses aforesaid to be printed then the plaintiffs in error desire the testimony of the witnesses named herein printed commencing at top of page 1601 and ending at bottom of p. 1683, inclusive.

138. Bill of Ex. p. 1684; first paragraph at top of page offering exhibits "a9" and "a10".

139. Bill of Ex. p. 1685; all of page.

140. Bill of Ex. p. 1686; first paragraph at top of page 1912 comprising eight lines.

141. Bill of Ex. p. 1688; commencing at top of page and ending with the last answer on page 1691 with the words: "before the bank failed".

142. Bill of Ex. p. 1763; testimony of George Dobson, commencing at top of page and ending at bottom of p. 1768.

143. Bill of Ex. p. 1769; testimony of H. T. Jones commencing at top of page and ending at the bottom of p. 1771.

144. Bill of Ex. p. 1772; commencing at top of page and ending at bottom of p. 1825, inclusive.

145. Bill of Ex. p. 1826; commencing at top of page and ending at the bottom of page 1834 including exhibit a17 and endorsements but omitting the last question on page 1829, all of page- 1830 and 1831 and the remainder of the answer at top of page 1832.

146. Bill of Ex. p. 1835; commencing at top of page and ending at bottom of p. 1843, including exhibits 1059 and 1060.

147. Bill of Ex. p. 1848, commencing at top of page and ending at bottom of page 1867.

148. Bill of Ex. p. 1838; testimony of Dennis Sailor, commencing at top of page and ending at bottom of page 1884 including exhibits.

149. Paragraph 24 hereof may be omitted, and in lieu thereof print Exhibit A hereto attached, being a schedule of Exhibits 109 to 146 inclusive, instead of the exhibits in full.

JONES NATIONAL BANK,

Pl'ff in Error;

BANK OF STAPLEHURST,

Pl'ff in Error;

UTICA BANK,

Pl'ff in Error;

THOMAS BAILEY,

Pl'ff in Error, Severally,

By J. J. THOMAS &

L. C. BURR, *Att'ys.*

Schedule of Ex. 109 to 146, Inclusive, Stubs of Crtf. of Deposit Register, Contained on pp. 187 to 205 of Bill of Ex.

Ex. No.	Date.	Crtf. No.	Payee.	Amount.	Stamped paid.
109.....	6/ 1/91	24653	C. Hammond.....	\$5,000	June 20, 1892
110.....	8/13/92	27375	H. R. Krug.....	10,000	Nov. 21, 1892
111.....	5/15/91	24574	P. L. T. Ashton.....	1,500	June 3, 1892
112.....	6/27/91	24806	Cassius S. Weese.....	2,100	June 27, 1892
113.....	6/10/91	24707	Jno. A. T. Hibbs.....	3,000	July 8, '92
114.....	1/ 2/92	25933	Mayer Bros.....	11,000	Jan. 3, 1898
115.....	4/28/91	24471	D. B. Welch.....	10,000	Nov. 20, 1891
116.....	7/ 7/91	24866	Austin Humphrey.....	4,500	Oct. 10, 1891
117.....	6/25/91	24800	W. S. Lenard.....	1,500	June 27, 1892
118.....	7/27/91	24986	H. R. Krug.....	7,000	Illegible
119.....	7/27/91	24981	A. P. S. Stuart.....	2,000	Jan. 27, '92
120.....	8/ 8/91	25056	Harper Note.....	7,000	Oct. 2, '91
121.....	11/28/91	25691	D. B. Welch.....	10,000	Jun- 28, '92
122.....	7/18/91	24937	J. E. Hill, Treas.....	14,550	Aug. 6, '91
123.....	6/26/91	24801	Henry Townson.....	1,897.50	Illegible
124.....	7/20/91	24941	J. E. Hill.....	10,000	Aug. 6, '91
125.....	1/20/93	28588	1st Nat'l Bk.....	5,000	None
126.....	10/ 3/91	25380	Hattie E. Carson.....	1,100	Oct. 3, '92
127.....	7/28/91	24994	N. S. Richardson.....	1,100	Sept. 29, '91
128.....	6/ 3/91	24670	Dan Hopkins.....	1,500	Dec. 4, '91
129.....	7/ 1/91	24774	Mayer Bros.....	3,000	Jan. 2, '92
130.....	7/ 1/91	24773	" "	2,000	" "
131.....	7/ 1/91	24772	" "	2,000	" "

1915 Received copy of above designations this 21st day of August 1914.

DAVID E. THOMPSON,
Def't in Error,
By STOUT, ROSE & WELLS,
His Attorneys.

1916 STATE OF NEBRASKA,
Seward County, ss:

J. J. Thomas being first duly sworn deposes and says that on the 21st day of August, 1914 he served a copy of the annexed designation for printing on the defendants in error, Charles E. Yates and Louisa P. Hamer, administratrix by leaving a true and correct copy thereof at the office of Bishop & Hall, a partnership composed of Frank H. Hall and Frank E. Bishop at the First National Bank Building in Lincoln, Nebraska with their stenographer and employee.

Affiant avers that he was unable to make personal service upon either of the members of said firm for the reason that the said Hall was in the City of Chicago and the said Bishop somewhere in the Dominion of Canada.

J. J. THOMAS.

Subscribed in my presence and sworn to before me this 22d day of August, 1914.

[Notarial Seal S. C. Stoner, Seward County, Nebraska.
Commission Expires Oct. 8, 1912.]

S. C. STONER,
Notary Public.

1917 [Endorsed:] 501/24240. 502/24241. 503/24242. 504/24243. In the Supreme Court of the United States. Jones Nat'l B'k, Pl'f in Error, v. Charles E. Yates et al., Def'ts in Error. (File No. 24,240.) Bank of Staplehurst, Pl'f in Error, v. Charles E. Yates et al., Def'ts in Error. (File No. 24,241.) Utica Bank, Pl'f in Error, v. Charles E. Yates et al., Def'ts in Error. (File No. 24,242.) Thomas Bailey, Pl'f in Error, v. Charles E. Yates et al., Def'ts in Error. (File No. 24,243.) J. J. Thomas & L. C. Burr, Att'ys for Plaintiff in Error.

1918 [Endorsed:] File No. 24,240, etc. Supreme Court U. S. October term, 1914. Term No- 501, 502, 503 & 504. Jones Nat'l Bank v. Yates et al., Bank of Staplehurst v. Yates et al., Utica Bank v. Yates et al., Bailey v. Yates et al. Designation by plaintiffs in error of parts of Bill of Exceptions to be printed, with proof of service of same. Filed August 25th, 1914.

- 1919 In the Supreme Court of the United States.
 Term No. 501. General No. 24210.
 JONES NATIONAL BANK, Plaintiff in Error,
 v.
 CHARLES E. YATES, et al., Defendants in Error.
 Term No. 502. General No. 24241.
 BANK OF STAPLEHURST, Plaintiff in Error,
 v.
 CHARLES E. YATES et al., Defendants in Error.
 Term No. 503. General No. 24242.
 UTICA BANK, Plaintiff in Error,
 v.
 CHARLES E. YATES et al., Defendants in Error.
 Term No. 504. General No. 24243.
 THOMAS BAILEY, Plaintiff in Error,
 v.
 CHARLES E. YATES et al., Defendants in Error.

Designations of Defendants Yates and Hamer for Printing Their Bill of Exceptions.

The defendants in error, Yates and Hamer, each designate the following portions of the bill of exceptions for printing, in addition to the portions of the bill of exceptions designated by the plaintiffs in error.

1. In connection with the plaintiffs' assignment 121, print the first paragraph, two questions and answers of page 1835, and page 1885 beginning at the top of page and ending at the bottom of p. 1887.
2. In connection with plaintiffs' designation 125, print exhibit a. x. P. 1514 and all of P. 1515, and Exhibit a. y. P. 1516.
3. In connection with plaintiffs' designation No. 105, print P. 1002 to the second question from the bottom of P. 1007; and commencing P. 1023 at the first question, to the end of the first answer at the top of P. 1024.
4. In connection with plaintiffs' designation 132, print from the top of P. 1586 to the end of the second answer on P. 1593, and the first three lines at the top of P. 1472; and beginning on P. 1476 with "By Mr. Bishop", to and including "Mr. Bishop; I offer in evidence Exhibit A. W.", P. 1477; and certificate No. 27, and assignment on the back, P. 1479; and certificate 82 and assignment on the back, P. 1480; and Exhibit A. W., six receipts, P. 1481.
5. Print, commencing on P. 1246 to and including P. 1247.
6. In connection with the plaintiffs' designation 130, print the first and last two paragraphs of P. 1565, and the first paragraph top P. 1566; also print objections, rulings and exceptions throughout Mr. Hamer's testimony from 1566 to the end of 1580.

7. These defendants join in designating for printing the same portions of the bill of exceptions as those designated by defendant David E. Thompson consisting of his points 1 to 37 inclusive.

FRANK E. BISHOP,

FRANK M. HALL,

As Attorneys for Defendants in Error

Charles E. Yates and Louisa Hamer, Adm'rs.

1921 [Endorsed:] File Nos. 24,240, etc. Supreme Court U. S. October term, 1914. Term Nos. 501, 502, 503 & 504. Jones National Bank, Plff in Error, v. Charles E. Yates et al. Bank of Staplehurst, Plff in Error, v. Charles E. Yates et al. Utica Bank, Plff in Error, v. Charles E. Yates et al. Thomas Bailey, Plff in Error, v. Charles E. Yates et al. Designation of additional parts of record to be printed by defendants in error Yates and Hamer. Filed November 13, 1914.

1922 In the Supreme Court of the United States.

File No. 24,240.

October Term, 1914. No. 501.

JONES NATIONAL BANK, Plaintiff in Error,

vs.

CHARLES E. YATES et al., Defendants in Error.

File No. 24,241.

October Term, 1914. No. 502.

BANK OF STAPLEHURST, Plaintiff in Error,

vs.

CHARLES E. YATES et al., Defendants in Error.

File No. 24,242.

October Term, 1914. No. 503.

UTICA BANK, Plaintiff in Error,

vs.

CHARLES E. YATES et al., Defendants in Error.

File No. 24,243.

October Term, 1914. No. 504.

THOMAS BAILEY, Plaintiff in Error,

vs.

CHARLES E. YATES et al., Defendants in Error.

Designation by Defendant in Error David E. Thompson of Additional Parts of the Record to Be Printed.

David E. Thompson, one of the defendants in error in the above-entitled cases, being File Nos. 24,240 and 24,241, states that he thinks it material that the following additional parts of the bill of

exceptions comprised in the record, should be printed, and hereby designates and requests that the Clerk print and include in the printed record the following parts of the bill of exceptions therein, in addition to the parts thereof designated by the plaintiff in error, namely:

1923 1. All of page 15, including objections to introduction of evidence.

2. All of the proceedings found on page 447 in connection with the offering of exhibit No. 978.

3. All of the proceedings found on page 449 in connection with the offering of exhibit No. 979.

4. All of the proceedings found on page 546 in connection with the offering of exhibit No. 983.

5. All of the proceedings found on page 458 in connection with the offering of exhibit No. 984.

6. All of the proceedings found on page 460 in connection with the offering of exhibit No. 985.

7. All of the proceedings found on page 462 in connection with the offering of exhibit No. 986.

8. All of the proceedings found on page 464 in connection with the offering of exhibit No. 987.

9. All of the proceedings found on page 466 in connection with the offering of exhibit No. 988.

10. On page 664, part of the cross-examination of witness H. J. Whitmore, commencing at the top of page and ending with answer "so far as I know", near the center of the page.

11. Pages 669, 671, part of the cross-examination of witness H. J. Whitmore concerning the transactions between the bank and R. O. Phillips, commencing with last question on page 669 and ending with the last answer on page 671.

12. Pages 673, 674, part of the cross-examination of witness H. J. Whitmore commencing with the question: "Q. Now, Mr.

1924 Whitmore, you never found a period from the organization of the bank until it closed, when Mr. Yates had promissory notes in there aggregating at one time as much as \$5,000, did you?" on page 673, and ending with the last answer on page 674.

13. Page 677, part of cross-examination of witness H. J. Whitmore, comprising the entire page.

14. All of the proceedings found on page 684 in connection with the offering of exhibit No. X 1040.

15. All of the proceedings found on page 686 in connection with the offering of exhibit No. X 1041.

16. All of the proceedings found on page 688 in connection with the offering of exhibit No. X 1043.

17. All of the proceedings found on pages 690, 692 in connection with the offering of exhibit No. X 1044.

18. All of the proceedings found on pages 701, 702 in connection with the offering of exhibit No. X 1046.

19. All of the proceedings found on pages 704, 705 in connection with the offering of exhibit No. X 1047.

20. All of the proceedings found on page 708 in connection with the offering of exhibit No. X 1048.

21. All of the proceedings found on page 711 in connection with the offering of exhibit No. X 1049.

22. All of the proceedings found on page 714 in connection with the offering of exhibit No. X 1050.

23. All of the testimony on cross-examination of witness H. T. Jones, commencing on page 876 and ending on page 936.

24. All of the testimony of witness H. J. Whitmore commencing on page 988 and ending on page 1019, including exhibits 1925 offered as a part of the cross-examination.

25. All of the testimony on cross-examination of witness H. J. Whitmore, commencing on page 1033 and ending on page 1038.

26. All objections to questions propounded to witness H. T. Jones, and the proceedings had thereon, found on pages 1141 to 1154, both inclusive.

27. All of the testimony on cross-examination of witness H. T. Jones, commencing on page 1160 and ending on page 1177.

28. All objections to questions propounded to witness E. Jacobs, and the proceedings had thereon, found on pages 1207 to 1212, both inclusive.

29. All of the testimony on cross-examination of witness Fritz Becker on page 1220.

30. All of the testimony on direct examination, of witness E. B. Stephenson, commencing on page 1472 and ending on page 1474.

31. All of the testimony on direct examination, of Sister Ida, commencing on page 1601 and ending on page 1602.

32. All of the testimony on direct examination, of witness W. H. Mendenhall, commencing on page 1606 and ending on page 1607.

33. All of the testimony on direct examination, of witness Mrs. R. A. White, commencing on page 1609 and ending on page 1610.

34. All of the testimony on direct examination, of witness Dr. H. B. Miller, commencing on page 1624 and ending on page 1625.

35. All of the testimony on direct examination, of witness William C. Rhode, found on page 1632.

36. All of the testimony on direct examination, of witness Fred Foster, found on page 1635.

1926 37. All of the testimony on direct examination, of witness Claude Wilson, commencing on page 1637 and ending on page 1638.

38. All of the proceedings shown on pages 1686 and 1687 upon the offering of testimony of R. C. Outcalt.

39. All of the testimony on direct and cross-examination, of witness D. E. Thompson, commencing on page 1885 and ending on

JOHN F. STOUT,
HALLECK F. ROSE,
ARTHUR R. WELLS,

*Counsel for David E. Thompson,
Defendant in Error.*

1927 [Endorsed:] In the Supreme Court of the United States. File No. 24,240. Oct., 1914, Term. No. 501. Jones National Bank vs. Charles E. Yates et al. File No. 24,241. Oct., 1914, Term. No. 502. Bank of Staplehurst vs. Charles E. Yates et al. File No. 24,242. Oct., 1914, Term. No. 503. Utica Bank vs. Charles E. Yates et al. File No. 24,243. Oct., 1914, Term. No. 504. Thomas Bailey vs. Charles E. Yates et al. Designation by defendant in error, David E. Thompson, of additional parts of the record to be printed. Stout, Rose & Wells, 524 Omaha National Bank B'd'g, Omaha, Nebraska, counsel for David E. Thompson, defendant in error.

1928 [Endorsed:] File Nos. 24,240, etc. Supreme Court U. S. October term, 1914. Term Nos. 501, 502, 503 & 504. Jones National Bank, Pl'ff in Error, vs. Charles E. Yates et al. Bank of Staplehurst, Pl'ff in Error, vs. Charles E. Yates et al. Utica Bank, Pl'ff in Error, vs. Charles E. Yates et al. Thomas Bailey, Pl'ff in Error vs. Charles E. Yates et al. Designation by David E. Thompson, defendant in error, of additional parts of record to be printed. Filed November 14, 1914.

Endorsed on cover: Bill of exceptions. Supreme Court of the United States, October Term, 1914. No. 501. Jones National Bank, plaintiff in error, vs. Charles E. Yates et al. No. 502. Bank of Staplehurst, plaintiff in error, vs. Charles E. Yates et al. No. 503. Utica Bank, plaintiff in error, vs. Charles E. Yates et al. No. 504. Thomas Bailey, plaintiff in error, vs. Charles E. Yates et al. In error to the Supreme Court of the State of Nebraska. Filed May 23, 1914. (24,240, 24,241, 24,242, 24,243.)

